LABOUR RELATIONS BOARD OF B.C.

ANNUAL REPORT 1983

A N N U A L R E P O R T

of the

LABOUR RELATIONS BOARD OF BRITISH COLUMBIA

FOR THE YEAR

1 9 8 3

LABOUR RELATIONS BOARD OF B.C.
1275 WEST 6TH AVENUE, VANCOUVER, B.C. V6H 1A6 / 736-2421

LETTER OF TRANSMITTAL

February 29, 1984

The Honourable Robert H. McClelland
The Minister of Labour
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Sir:

As provided in Section 151 of the Labour Code, I have the honour to submit herewith the tenth Annual Report for the Labour Relations Board of British Columbia for the year ended December 31, 1983.

Yours very truly,

Stephen Kelleher
Chairman

LABOUR RELATIONS BOARD OF BRITISH COLUMBIA

MEMBERS

(as of December, 1983)

Stephen F.D. Kelleher	Chairman
Brian W. Foley	Vice-Chairman and Registrar
Angus Macdonald	Vice-Chairman
Kenneth E. Albertini	Vice-Chairman
Peter R. Sheen	Vice-Chairman
J. Dale Michaels	Vice-Chairman
Alex G. Markides	Vice-Chairman
Shona A. Moore	Vice-Chairman
Bryan E. Williams	Vice-Chairman
John D. Kinzie	Vice-Chairman

Clarence J. Alcott	Doris Hanson
Daniel J. Bell	James R. McAvoy
John Macdonald Billings	Jack A. Moore
John Brown	Nora A. Paton
Wayne G. Carkner	Douglas G. Quinn
Herbert Lowell Fritz	Anthony D. Saunders
Irvin Froese	John L. Star
John L. Fryer	T. Wyman Trineer
Roy Gautier	H. Henry Volkmann

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I. INTRODUCTION

Under the Labour Code, R.S.B.C. 1979, c.212, the Labour Relations Board is directed to report annually to the Minister on its activities. Section 151 states:

> 151. (1) The board may report to the minister, and shall report to the minister on his request and the minister may authorize the board to publish its report.
>
> (2) The board shall, on or before March 1 each year, make a report to the minister for the preceding calendar year, setting out briefly
>
> (a) all applications to the board under this Act and summaries of the findings of the board on them;
>
> (b) other matters the board considers to be of public interest in the discharge of its duties under this Act; and
>
> (c) other information the minister directs.
>
> (3) The report referred to in subsection (2) shall be laid before the Legislature if it is then in session; otherwise the report shall be laid before the Legislature within 15 days after the opening of the next ensuing session.

This requirement for a separate report by the Board reflects the creation under Part 2 of the Code of a labour board whose structure and wider responsibilities are distinct from those of labour boards created under previous legislation. In this tenth Annual Report on the Board's activities, we will follow the same basic format as was used in previous reports, dealing first with the main events affecting the Board during the past year, and then with the workload and pattern of decisions of the Board in the various areas of its responsibility in 1983.

As well, we will recall certain events which highlighted labour-management relations in B.C. in 1983, and which were manifested in proceedings before the Labour Relations Board.

II. PERSONNEL

At the commencement of the report year, the complement of the Board was twenty-two, composed of the Chairman: Stephen F.D. Kelleher; eight Vice-Chairmen: Ronald F. Bone, Angus Macdonald, Kenneth E. Albertini, Brian Foley , Gabriel Somjen, Allan E. Black, Peter Sheen and J. Dale Michaels; and thirteen part-time Members: Clarence Alcott, John Billings, John Brown, Wayne Carkner, Herbert Fritz, Irvin Froese, Doris Hanson, James McAvoy, Jack Moore, Nora Paton, Anthony Saunders, Douglas Quinn, and Henry Volkmann.

During 1983, there were several changes in the composition of the Board which resulted in a complement of twenty-eight at the end of the report year. Ronald F. Bone, Registrar and Vice-Chairman, retired. Mr. Bone had served as Registrar for ten years. Vice-Chairmen Gabriel Somjen and Allan Black left the Board to return to the private practice of law. Vice-Chairman Angus MacDonald was re-appointed as a Vice-Chairman when his term of appointment expired. Vice-Chairman Brian Foley was appointed Registrar of the Board. Alex Markides, Shona Moore, Bryan Williams and John Kinzie were appointed as Vice-Chairmen. John Star, Roy Gautier and Wyman Trineer were appointed as new Board members. John Fryer, Daniel Bell, Jack Moore and Henry Volkmann were re-appointed as Board Members.

So, as of January 1, 1984, there were twenty-eight appointed Members, while the administrative and legal staff numbered forty-one.

Section 22 of the Code requires that the principal office of the Board be at or near Vancouver, the central location for labour relations activities within the Province. The Board's offices have been located at 1275 West 6th Avenue, in the City of Vancouver since October 26, 1979.

III. RESPONSIBILITIES OF THE BOARD

The history and details of the Board's responsibilities under the Labour Code and the British Columbia Labour Relations Board Regulations were extensively discussed in the 1974 Annual Report. The 1975 Report presented three Tables providing: a historical record of the Labour Code and its amendments (Table A); statutes conferring authority on the Board (Table B); and the Regulations made pursuant to the Code (Table C). In 1977, a new table was added setting out those statutes which affect the Board's authority (Table D).

In the 1980 Report only, a brief table of concordance had been included to indicate changes in titles and chapter designations of the statutes listed in Tables A to D, as a consequence of the proclamation of the Revised Statutes of British Columbia (R.S.B.C.) 1979. This revision and consolidation of the Public General Acts of British Columbia included certain changes in the title, language and structure of the Labour Code, as well as in many other public acts of British Columbia. The stated purpose of these changes was to provide a more

uniform mode of expression in the public statutes and not for the purpose of effecting substantive changes in the law. Some pre-1979 statutes listed in Tables A to D were not included in the R.S.B.C. 1979 consolidation (they were indicated in Table E of the 1980 Report as "not consolidated"). Despite their absence from the consolidated statutes, these acts remain in full force and effect until repealed.

In addition to its mandate under the Labour Code, the Board has been charged with responsibility in labour relations matters under fourteen other statutes (Table B). By virtue of the Public Service Amendment Act, 1980, S.B.C. 1980, c.46, that part of the Public Service Act establishing the Public Service Adjudication Board, its jurisdiction and the right of parties to appear before it has now been repealed. The transitional provisions in Section 8 of the Public Service Amendment Act, 1980 allow the parties to decide how matters which were previously before the Public Service Adjudication Board are to be completed; in the absence of agreement, that Section allows for the disposition of those matters in accordance with Part 6 of the Labour Code. As a result, the Labour Relations Board has now assumed the general superintendency of the public service arbitration process and matters which previously fell within the jurisdiction of the Public Service Adjudication Board will now be heard by arbitrators on the panel of arbitrators in respect of the collective bargaining relationship between the Government of British Columbia and the British Columbia Government Employees' Union.

TABLE A

STATUTORY HISTORY OF THE LABOUR CODE

(1) THE LABOUR CODE

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Code, R.S.B.C. 1979, c.212 (formerly Labour Code of British Columbia, S.B.C. 1973, (2nd Sess.), c.122)	November 13, 1973 Proclamation	12, 26, 124, 139, 140, 150	Reg. 424/74, Pt. II, V. 16, p.645
	December 20, 1973 Proclamation	21, 55	Reg. 12/74, Pt. II, V. 17, p.158
	January 14, 1974 Proclamation	1-11, 13-20, 22-25, 27-30, 32-54, 56, 59-69, 73, 92-112, 122, 123, 125-127, 138, 141-149, 150A, 151(a), 152	Reg. 41/74, Pt. II, V. 17, p.192
	January 24, 1974 Proclamation	70-72	Reg. 53/74, Pt. II, V. 17, p.195
	March 1, 1974 Proclamation	74-78	Reg. 154/74, Pt. II, V. 17, p.407
	March 14, 1974 Proclamation	113-121A	Reg. 174/74, Pt. II, V. 17, p.433
	August 15, 1974 Proclamation	57, 58	Reg. 578/74, Pt. II, V. 17, p.949
	September 2, 1974 Proclamation	31, 79-91	Reg. 606/74, Pt. II, V. 17, p.998
	September 16, 1974 Proclamation	151(b) and (c)	Reg. 682/74, Pt. II, V. 17, p.1116

TABLE A CONT'D.

STATUTORY HISTORY OF THE LABOUR CODE

(2) AMENDING ACTS

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Statute Law Amendment Act, 1974, S.B.C. 1974, c.87, s.22	October 14, 1974 Proclamation	22(a) (among others)	Reg. 709/74 Pt. II, V. 17, p.1158
	June 20, 1974 Royal Assent	22(b) - 22(i) (among others)	N/A
Essential Services Continuation Act, S.B.C. 1974, c.108, s.6	August 9, 1974 Royal Assent	6 (among others)	N/A
Elevator Construction Industry Labour Disputes Act, S.B.C. 1974, c.107, s.6	November 26, 1974 Royal Assent	6 (among others)	N/A
Labour Code of British Columbia Amendment Act, 1975, S.B.C. 1975, c.33	June 26, 1975 Royal Assent	1-6, 8-33	N/A
	January 14, 1974 Retroactive Effect	7	N/A
Labour Code of British Columbia Amendment Act, 1976, S.B.C. 1976, c.26	June 30, 1976 Royal Assent	1-8	N/A
Miscellaneous Statutes Amendment Act, 1976, S.B.C. 1976, c.32	July 8, 1976 Proclamation	12A	Reg. 391/76, Pt. II, V. 19, p.511

TABLE A CONT'D.

STATUTORY HISTORY OF THE LABOUR CODE

(2) AMENDING ACTS

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Code of British Columbia Amendment Act, 1977 S.B.C. 1977, c.72	September 27, 1977 Royal Assent	1-12	N/A
Ministerial Titles Amendment Act, S.B.C. 1977, c.75	October 21, 1977 Proclamation	Sch. I, Ss. 8(2), 127(3), 129(a), 136, 137(1)(a)	N/A
Essential Services Disputes Act, S.B.C. 1977, c.83	October 28, 1977 Proclamation	19 repeals 73(1) to (6)	N/A
Miscellaneous Statutes Amendment Act, 1978, S.B.C. 1978, c.28	July 6, 1978 Proclamation	11 amends 69	N/A
Financial Administration Act, S.B.C. 1981, c.15	November 26, 1981 Proclamation	117 repeals 139(2)	Reg. 468/81, Pt. II, V. 24, p.981
Court of Appeal Act, S.B.C. 1982, c.7	September 7, 1982 Proclamation		Reg. 302/82, Pt. II, V. 25, p.428
Labour Code Amendment Act, 1982, S.B.C. 1982, c.59	August 4, 1982 Proclamation		Reg. 354/82, Pt. II, V. 25, p.564
Regulations Act S.B.C. 1983, c.10	October 26, 1983 Regulation	21, 25 and Schedules 2 and 16 amend 21(2), 29(1)(a), (b), 29(2), 35(c), 42(2), 59(2), 60(c), 61(2), 73(1)(a), 75, 81(5)(a), (6), 142(1), 154	Reg. 393/83, Pt. II, V. 26 p.607

TABLE B

STATUTES CONFERRING AUTHORITY ON THE LABOUR RELATIONS BOARD

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Code, R.S.B.C. 1979, c.212	Refer Table A	1-127, 138-154	
Public Service Labour Relations Act, R.S.B.C. 1979, c.346	January 3, 1974 Proclamation	1-14, 17-28 (amendments to ss. 4, 11 and 17 yet to be proclaimed)	Reg. 14/74, Pt. II, V. 17, p.160
Assessment Authority Act, R.S.B.C. 1979, c.22	June 20, 1974 Royal Assent	21 (among others)	N/A
Institute of Technology Act, R.S.B.C. 1979, c.199	July 4, 1974 Proclamation	7	Reg. 485/74, Pt. II, V. 17, p.788
Community Resource Board Act, R.S.B.C. 1979, c.58	November 21, 1974 Proclamation	4	Reg. 781/74, Pt. II, V. 17, p.1209
Elevator Construction Industry Labour Disputes Act, S.B.C. 1974, c.107	November 26, 1974 Royal Assent	3, 5 (among others)	N/A
Hospital Services Collective Agreement Act, S.B.C. 1976, c.21	June 9, 1976 Royal Assent	7 (among others)	N/A
Ferry Corporation Act, R.S.B.C. 1979, c.128	June 30, 1976 Royal Assent	23 (among others)	N/A

TABLE B CONT'D.

STATUTES CONFERRING AUTHORITY ON THE LABOUR RELATIONS BOARD

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Railway and Ferries Bargaining Assistance Act, S.B.C. 1976, c.48	June 15, 1976 [s.22(1)] Royal Assent on June 14, 1976	Part II (6-14)	N/A
	February 3, 1977 Proclamation	1, Pt. I (2-5)	Reg. 44/77, Pt. II, V. 20, p.198
	October 6, 1977 Proclamation	Part II (19, 20)	Reg. 422/77
B.C. Buildings Corporation Amendment Act, 1977, S.B.C. 1977, c.32	August 18, 1977 Royal Assent	16A (among others)	N/A
System Act, R.S.B.C. 1979, c.399	September 1, 1977 Proclamation	17 (among others)	Reg. 349/77, Pt. II, V. 20, p.665
Essential Service Disputes Act, R.S.B.C. 1979, c.113	October 28, 1977 Proclamation	1-18 (and schedule)	Reg. 465/77, Pt. II, V. 20, p.853
College and Institute Act, R.S.B.C. 1979, c.53	October 10, 1978 Proclamation	30(8)	Reg. 463/78, Pt. II, V. 21, p.1219
	December 15, 1977 Proclamation	42 (among others)	Reg. 607/77, Pt. II, V. 21, p.357
West Kootenay Schools Collective Bargaining Assistance Act, S.B.C. 1978, c.42	December 9, 1978 Royal Assent	10 (among others)	N/A
	January 15, 1979 Proclamation	11	Reg. 8/79, Pt. II, V. 22, p.130
Public Service Amendment Act, S.B.C. 1980, c.46	August 21, 1980 Royal Assent	6-8 (among others)	N/A

TABLE C

REGULATIONS UNDER THE LABOUR CODE*

Effective Date	Regulation No.	B.C. Gazette References
December 28, 1973	1-36	Reg. 522/73 Pt. II, V. 17, p.26
March 14, 1974	Amending Reg. 522/73	Reg. 162/74, Pt. II, V. 17, p.410
September 4, 1974	37-43	Reg. 601/74, Pt. II, V. 17, p.968
November 28, 1974	Amending Reg. 601/74 and 522/73	Reg. 786/74 Pt. II, V. 17, p.1202
September 24, 1975	44	Reg. 616/75, Pt. II, V. 18, p.861
December 22, 1976	45-47	Reg. 667/76, Pt. II, V. 20, p.100
March 1, 1978	48-79	Reg. 39/78, Pt. II, V. 21, p.437
August 19, 1978	80	Reg. 380/78, Pt. II, V. 21, p.1074
November 27, 1979	17(2)	Reg. 541/79, Pt. II, V. 22, p.1091

* The Lieutenant-Governor in Council is empowered by Section 150 of the Labour Code to make regulations and orders for the purpose of carrying out the provisions of the Act according to their intent. The regulations are cited as the British Columbia Labour Relations Board Regulations.

TABLE D

STATUTES AFFECTING LABOUR CODE

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
University Act, R.S.B.C. 1979, c.419	October 7, 1977 Proclamation of s.38, Miscellaneous Statutes Amendment Act, 1977, S.B.C. 1977, c.76	80	Reg. 434/77, Pt. II, V. 20, p.767

IV. AMENDMENTS TO THE CODE AND THE PUBLIC SERVICE LABOUR RELATIONS ACT

The greatest part of the Board's workload is generated by proceedings under the Labour Code. The Code was first enacted in 1973 and proclaimed in force in several stages throughout 1974. Since that time, it has been revised and clarified through various amendments. Some of these involved major substantive changes while others were purely technical refinements. Extensive revisions were made in the Amendment Acts of 1975 (Bill 84), 1976 (Bill 77) and 1977 (Bill 89). Both substantive and technical revisions (described in the 1982 Annual Report) were made to the Code in the Labour Code Amendment Act, 1982, S.B.C. 1982, c.59.

In this report year, a number of technical revisions were made to the Code in the Regulations Act, S.B.C. 1983, c.10.

V. HIGHLIGHTS

A. Public Sector Dispute

The newly elected Provincial Government introduced a number of legislative changes in the summer of this report year. In response to these legislative initiatives a number of trade unions formed a group known as "Operation Solidarity". This group was a member of another organization, the "Solidarity Coalition". These organizations opposed much of the proposed legislation. The British Columbia Government Employees' Union

was in a lawful strike position as of November 1, 1983, with respect to its members employed directly by the Provincial Government. At that time, Operation Solidarity publicized a plan outlining a scheduled program of escalating job action. The British Columbia Government Employees' Union strike was to serve as the first stage in the Operation Solidarity program. The next stage was to involve a withdrawal of services at educational institutions throughout the province.

During the first two weeks of November, the Board received 80 applications requesting relief from both anticipated and actual work stoppages and from picketing by one or more unions. Between November 2 and 14, Board personnel were able to settle or adjourn indefinitely 31 of these applications through informal proceedings. The remaining 49 applications were heard by panels of the Board. A total of 22 formal hearings related to these cases were held between November 2 and 14, 1983. Many hearings were consolidations of more than one complaint.

Fifteen of the 49 applications were settled or adjourned during or following formal hearings. Decisions were pending on 10 of the applications at the end of the report year.

The Board issued decisions in respect of the remaining 24 applications. In 20 of the 24 applications, the relief requested was granted wholly or in part, while in 4 cases the requests for relief were denied in toto. The 80 applications dealt with between November 2 and 14 constituted approximately one third of the total number of applications under Part 5 of the Code dealt with by the Board during this report year.

During the period between November 2 and 14, the Board agreed to mediate disputes between the Government Employee

Relations Bureau and the British Columbia Government Employees' Union concerning the provisions of essential services by striking employees. Vice-Chairman Bryan Williams acted as mediator for the parties in five such disputes, three involving health care institutions and two involving court related services. All five disputes were successfully resolved at the informal level.

B. Safety Related Work Stoppages: Section 83(3) of the Labour Code

In Northwood Pulp and Timber Limited, BCLRB No. 11/83, (1983), 2 CLRBR (NS) 74, the Board dealt with the interpretation to be given to Section 83(3) of the Code:

> 83. (3) An act or omission by a trade union or by the employees shall not constitute a strike where it is required for the safety or health of those employees.

In this case the employer decided to install a bank of capacitators which contained PCBs. A number of electricians, employed by the employer, refused to hook up the electrical cable which ran between a bank of capacitators and the main control room. In addition a utility man refused to sweep out a room where there was a capacitator containing PCBs. PCBs are undisputedly dangerous substances and the employees refused to do the work in question because they were concerned about the possibility of a leak in the capacitators. The employer alleged, based on these work refusals, that the CPU and certain of its members were engaged in illegal strike action. As a defence to the complaint, the union invoked Section 83(3)

claiming that the work endangered the health and safety of its members.

The Board concluded that the employees honestly believed that they were exposed to danger and on the facts those beliefs were reasonably held. Therefore Section 83(3) provided a defence to the complaint and the employees' refusal to follow instructions did not constitute a strike. When dealing with a Section 83(3) defence the Board will determine whether the employees in good faith held a reasonable belief that the refusal to work was necessary to their safety or health.

The Board was of the view that this section of the Code could not be read in isolation. If, as was argued by the employer, Section 83(3) required an objective assessment by the Board as to whether a refusal to work was required for the safety or health of employees, it could create some anomalous situations. For example, employees could be ordered to return to work to perform tasks which they may, as a matter of arbitral law, have a right to refuse and which they may have a duty to refuse under regulation 8.24(1) of the Industrial Health and Safety Regulations under the Workers' Compensation Act.

The Board also noted that although "Section 83(3) has been the law of the Province for nearly eight years" it has not been used as a pretense for unlawful work stoppages. An employee's right to refuse to work, pursuant to Section 83(3), is not simply "a licence to walk off the job". The Board stated that a refusal to perform work which was not related to the capacitators or a refusal to work by employees other than those in the electrical department would have been unlawful.

In summary Section 83(3) "is based on a consideration of whether the employees at the time had a good faith and

reasonably-held belief that the refusal was necessary for their health or safety."

C. Technological Change: Sections 74-78 of the Labour Code

In Eurocan Pulp and Paper Co. Ltd. and Canadian Paperworkers Union, Local 298, BCLRB No. 199/83, (1983), 2 CLRBR (NS) 292, the Board addressed important issues concerning the scope of the technological change provisions of the Code. The decision involved an application by the union for a declaration that the employer had introduced a "technological change" within the meaning of the Code.

The employer operated a large pulp and paper manufacturing facility. The major ingredient required by the employer for this operation was woodchips. Although woodchips had always been produced in the employer's woodroom the trend had been for the employer to purchase its woodchip requirements from other sawmills. In March, 1982 the employer shutdown its woodroom for an indefinite period and began to acquire all woodchips from other sawmills. This closure, which was for economic reasons, displaced approximately 68 employees.

The Board stated that Section 78 defined technological change in broad terms and the Code did not expressly require that the change be a permanent one. Furthermore the fact that the woodroom closure occurred for economic reasons made no difference to the Board's determination that a technological change had occurred. The change in the employer's method of obtaining woodchips and the closing of the woodroom was a technological change within the meaning of Section 78 in that it "constituted a change in the work, undertaking or business

or a change in material previously used in the work, undertaking or business."

The Board was also faced with the question of whether technological change in the collective agreement was to be defined by reference to the definition in Section 78 of the Code. The collective agreement between the parties, which specified the protection that employees were entitled to in the event of technological change, contained a definition of technological change that was narrower than that contained in Section 78.

The Board held that the parties to a collective agreement cannot contract out of the technological change provision of the Code. To the extent that the definition of technological change in a collective agreement is narrower than the statutory definition, the collective agreement does not meet the requirements of Section 74. Section 74 requires that a collective agreement provide for a dispute resolution mechanism, without stoppage of work, of all disputes relating to technological change as that term is defined in Section 78. When, as in the present case, the parties have not negotiated provisions for adjustment to technological change, as that term is defined in Section 78 , the Minister of Labour may prescribe provisions for the parties pursuant to Section 75.

The Board concluded that the benefits specified in the collective agreement for those employees affected by technological change were available only to those persons affected by the types of technological change included in the definition of that term in the collective agreement. However the Board also noted that the parties' definition of technological change was irrelevant for the purposes of Section 76 of the Code. Whether the closure of the woodroom amounted to a technological change

within the meaning of the collective agreement was a matter to be adjudicated by a board of arbitration under the agreement.

VI. PRACTICE BEFORE THE BOARD: PROCEDURAL MEMORANDA

A. Hearing Procedure

On July 13, 1983, the Board issued a practice note, to the labour relations community, outlining some of the Board's concerns about practice and procedure before the Board.

> " This memorandum is being sent to all employers, trade unions, law firms and other organizations on the Board's mailing list. It is a result of heightened concern on the part of the Board with the length of Board hearings and related procedural problems. Some of these concerns have been expressed in decisions of the Board. Others have been the subject of addresses to public groups by representatives of the Board. At a recent meeting of the full Board, it was decided that this Memorandum should be issued to the industrial relations community as a whole.
>
> The first area of concern involves the setting of hearing dates. The Board's current practice is to estimate the time required and to attempt to arrange dates which are mutually convenient to the parties. This practice gives rise to two problems. First, the Board is not always able to estimate accurately the length of the hearing. If the Board sets too short a period for a hearing and the parties consider this to be unrealistic, they should notify the Board immediately. Second, the board does not have the resources to arrange

dates which are mutually convenient if the parties do not cooperate fully. Telephone calls from Board staff for the purpose of setting hearing dates should be responded to promptly. Much time is lost where parties' representatives are not available by telephone and have not authorized other members of their staff to agree to hearing dates on their behalf. It is unfortunate that if the Board does not receive the necessary cooperation, the only alternative will be to set hearing dates without consulting the representatives.

The second area of concern is the possibility of prehearing initiatives which can be taken for the purpose of shortening the hearing. The Board will be holding prehearing conferences in certain cases. Sometimes, because of the location of the parties, these conferences will be by telephone. The conference will have several purposes: encouraging the parties to agree on as many facts as possible; identifying preliminary objections beforehand; and, encouraging the exchange of particulars, documents and case authorities. We encourage the parties to discuss up-coming hearings as fully as possible. Hearing time is often lost when a party introduces a complex document which the other parties have not seen before. These delays are usually avoidable.

The third area of concern involves the hearing itself. The Board is committed to hearings commencing at the scheduled time. Delaying a hearing because of the late arrival of a participant creates an unfairness to the Board, the other parties and the process itself. The parties should be in the hearing room and ready to proceed at the appointed time. The adjournments during the hearing day are for a fixed length of time. However, too often one or more persons does not arrive back in the hearing room on time. The panel will be in the hearing room at the appointed time. The Board expects the parties to make the same effort.

Hearing time is also lost because of unnecessary adjournments in the course of the

hearing day. For example, some counsel routinely ask for an adjournment after a witness has been examined, in order to prepare cross examination. That should only be necessary in unusual circumstances.

Hearings are sometimes delayed because a party wishing to submit a document as evidence fails to bring sufficient photocopies of it. Parties should prepare a sufficient number of copies to provide one to each party and each member of the panel hearing the case. As well, many hearings are attended by staff lawyers employed by the Board. An additional copy for the staff lawyer is appreciated.

The fourth area of concern is summation and argument. Many representatives appear to be under the impression that the panel is unfamiliar with the written submissions filed and with cases submitted before the hearing. With few exceptions, that is a mistaken view. It can often lead to unnecessarily long presentations.

Most of the concerns expressed in this Memorandum only apply to a minority of persons appearing before the Board. However, we feel it is timely to express these concerns and outline some initiatives we are introducing. Parties are more acutely aware than ever of the expense of Board hearings. The resources of the Board itself are extremely limited. This Memorandum represents a commitment by all members of the Board of to make the hearing process as efficient as possible."

In addition the Board has issued four practice notes in the past concerning procedures under various sections of the Code. In light of the need to keep the labour relations community up to date on the practice and procedure before the Board, it was considered appropriate to reproduce the relevant excerpts from the previous practice notes.

B. Whether a person is an employee in an appropriate bargaining unit: Section 34(1)(a) and (L)

On April 14, 1982, the Board issued a practice note concerning the definition of employee, and inclusion or exclusion of persons from bargaining units.

> " ...As a general rule, the Board will only deal with Section 34 cases once the duties and responsibilities have actually been performed by the person in the position for a significant period of time (usually 90 days or more). Only in very exceptional and extraordinary cases will the Board review Section 34 cases before persons are actually performing the duties outlined in any job descriptions submitted. That is because the Board is never sure that the duties described will materialize to the extent that they are envisaged by the employer.
>
> The Board will be extremely reluctant to consider Section 34 applications in cases where the parties themselves have not discussed the matter in detail. As was stated in the Board's decision in Cranbrook and District Hospital, BCLRD No. 82/76 at 15:
>
> > ...The resources of this Board must be an avenue of last resort in disputes of this sort. It is incumbent on the parties to attempt to reach some settlement, or at least to have some discussion, before sending in a Section 34 application to the Board.
>
> The Board's general rule, therefore, is that only after the parties have attempted unsuccessuly to resolve the matter will the Board entertain a Section 34 application. If the parties reach agreement as to which persons should be included in or excluded from the bargaining unit, the Board will generally respect those arrangements. As was stated in

the Board's decision respecting Automatic Electric (Canada) Limited, BCLRB No. 76; [1976] 2 Can LRBR 97 at 99:

> ' The issue of principle that is raised by this case is what attitude the Board should take to such agreed-to arrangements if a party later brings the matter back to the Board pursuant to a s. 34 application. Our judgment is that the Board should respect these arrangements. We add at the outset two caveats to that principle: first of all, that the inclusions and exclusions which have been agreed upon by the parties fit reasonably within the flexible policies which the Board follows in defining an appropriate unit; secondly, that the union, in negotiating a specific boundary to the bargaining unit, has not violated its duty by fair representation to certain employees by arbitrarily or discriminatorily excluding them from the benefits of collective bargaining.'

The Board is committed to dealing expeditiously with any Section 34 application presented to it. However, it will be very reluctant to deal with applications in situations where the duties described are not actually the duties being performed or where the parties have not made attempts to resolve the matter themselves.

A second concern relates to the manner in which the application should be made. Wherever possible the applicant must provide specific details regarding the duties performed by the person(s) whose inclusion or exclusion is sought. This will enable the other party or parties to respond in turn and will ultimately allow the Board to make a decision based on the actual duties performed. The Board is particularly interested in the following factors:

1. The functions and responsibilities associated with each of the positions;

2. The relationship of the persons in question as a group to the overall employee complement of (name of employer);

3. In the case of those positions which have previously been the subject of a Board determination, whether there have been any material changes in functions and responsibilities which will justify a different determination by the Board;

4. An analysis of the factual situation of the employees in the light of the applicable decisions and policies under the Labour Code; and,

5. Any other facts which the parties consider relevant to this case.

To summarize, the criteria for submitting a Section 34 request are as follows:

(a) The person in the position should have actually performed the duties for at least 90 days;

(b) The employer and trade union must have made a sincere attempt to resolve the matter themselves; and,

(c) Where possible, the applicant must provide specific details regarding the position on which the Section 34 is sought."

C. Unfair Labour Practice: Section 3(3)(a) and (c)

In 1980, the Board issued two procedure notes concerning, first, unfair labour practices (July 21, 1980), and second, the duty of fair representation (November 7, 1980).

> " With respect to Section 3, we have decided to employ the following new procedures on an experimental basis for complaints alleging violations of Section 3(3)(a) or (c) where a termination is involved.
>
> 1. The trade-union or the complainant(s) will be required to use a specified form [available from the Registrar's Office] for the lodging of the complaint. Copies of the form may be obtained from the Board.
>
> 2. The respondent to the complaint will forthwith be sent a copy of the complaint together with a document entitled Notice of Proceedings.
>
> 3. The Notice of Proceedings will serve four purposes:
>
> (a) as a notice of the complaint;
>
> (b) as a notice of the date by which written submissions must be received (which typically will be approximately 7 days following receipt of the complaint);
>
> (c) as a notice of an informal meeting date (which typically will be approximately 10 - 14 days following the receipt of the complaint);
>
> (d) as a notice of a formal hearing (which typically will be approximately 14 - 28 days following the receipt of the complaint). Obviously, if the complaint

> is settled in the meantime, the formal hearing will be cancelled.

A panel chairman will be appointed at the same time as the complaint is acknowledged and interchanged. The panel chairman who is selected, in addition to presiding over the formal hearing, will be available to deal with any pre-hearing applications which may be necessary....

Two further comments. There may be cases of alleged unfair labour practice terminations where these new procedures are inappropriate. Such cases will be singled out for other procedural treatment. By the same token, there may be cases involving alleged unfair labour practice terminations which also involve other matters but where these new procedures would be entirely appropriate. Those cases will be handled in a manner consistent with the steps outlined above."

D. Duty of Fair Representation: Section 7(1)

" ...Broadly speaking, complaints under Section 7(1) fall into two categories: (1) complaints about contract interpretation or administration; and (2) complaints about termination (including long-term lay-off). Obviously, the latter category is more urgent than the former. The latter is more urgent to the employee because he or she is out of a job. It is more urgent to the employer and the trade-union because of the potential exposure to accumulating back pay.

I have concluded that complaints under Section 7(1) involving contract interpretation and administration should [be processed under] the original procedural format. Upon receipt of a complaint, the Board will formally notify all interested parties, seek their submissions, conduct an investigation, etc.

With respect to complaints involving terminations, I have concluded that a new and more expedited procedure should be employed on an experimental basis:

1. The complainant(s) will be required to use a specified form [available from the Registrar's Office] for the lodging of the complaint. When the Board receives a letter which constitutes a complaint under Section 7(1), the complainant will be sent a copy of the form and will be required to fill it out before the matter is initiated.

2. The trade-union and the employer will forthwith be sent a copy of the complaint (plus the initial letter if any) together with a document entitled Notice of Proceedings [available from the Registrar's Office]. Although a complaint under Section 7(1) is a complaint against the trade-union, where a termination is involved the employer is treated as a party because the potential remedy(ies) directly affect the employer as well as the trade-union. See, for example, Adams [1976] 1 Can LRBR 192 at pp. 198-201.

3. The Notice of Proceedings will serve four purposes:
   (a) as a notice of the complaint;
   (b) as a notice of the date by which written submissions must be received (which typically will be approximately ten days following receipt of the complaint);
   (c) as a notice of an informal meeting date which typically will be approximately 14 - 21 days following the receipt of the complaint);
   (d) as a notice of a formal

> hearing (which typically will be approximately four - six weeks following the receipt of the complaint). Obviously, if the complaint is settled in the meantime, the formal hearing will be cancelled.

A panel chairman will be appointed at the same time as the complaint is acknowledged and interchanged. The panel chairman who is selected, in addition to presiding over the formal hearing, will be available to deal with any pre-hearing applications which may be necessary. ...

There may be cases of alleged violations of Section 7(1) which involve terminations but where the above procedure would be inappropriate. Such cases will be singled out for different procedural treatment. By the same token, there may be cases which involve other matters but where the new procedure would be entirely appropriate. Such cases will be handled in a manner consistent with the steps outlined above.

Finally, I do wish to emphasize that this is procedural change only. It has nothing to do with the substantive law. It simply represents an attempt to deliver that substantive law more quickly and effectively."

E. Businesses Treated as One Employer and Successorship: Sections 37 and 53

On April 25, 1979, the Board issued a procedural memorandum for applications under Sections 37 and 53 of the Code, which emanate from the construction industry:

"...The Board has decided to employ the following procedures on an experimental basis for applications under Section 37 in the construction industry.

1. The trade unions involved will be required to use the form of application earlier mentioned. They may of course provide such additional information as may be warranted.

2. The respondents to the application will forthwith be sent a copy of the application together with a document entitled Notice of Proceedings under Section 37 of the Labour Code.

3. The Notice of Proceedings under Section 37 of the Labour Code will serve four purposes:
   (a) as a notice of the application;
   (b) as a notice of the date by which written submissions must be received (which typically will be approximately 7 - 10 days following receipt of the application);
   (c) as a notice of an informal meeting date (which typically will be approximately 10 - 14 days following receipt of the application);
   (d) as a notice of a formal hearing (which typically will be approximately 21 - 25 days following receipt of the application). Obviously, if the matter is settled in the meantime the formal hearing will be cancelled.

It sometimes occurs that an application under Section 37 is coupled with an application under Section 53. Where that happens, the respondents will be sent the following further documents:

1. A copy of the application pursuant to Section 53.

2. A document entitled Notice of Proceedings under Section 53 of the Labour Code [available from the Registrar's Office]. This document will serve the same purposes as the Notice of Proceedings under Section 37 of the Labour Code, and the dates for the receipt of written submissions, the informal meeting, and the formal hearing will be the same.

There will also be instances, as there have been in the past, where an application is made under Section 53 by itself -- i.e. not as a companion to an application under Section 37. In some such instances the above new procedures will be warranted and employed. A judgment will be made in each case as to whether or not that should occur. That judgment will depend on the apparent urgency of the situation, the extent to which the applicant has supplied detailed information in support of the application, and the like.

It is also my intention that a panel chairman should be appointed at the same time as the application under Section 37 (and/or Section 53) is acknowledge and interchanged. The panel chairman who is selected, in addition to presiding over the formal hearing, will be available to deal with any pre-hearing applications which may be necessary...."

VII. THE WORK OF THE BOARD IN 1983

In 1983, the Board received 4985 applications. This caseload represents a slight increase from the 1982 figure of 4982. The Board disposed of 4995* applications in 1983, a decrease from the 5219 applications disposed of in 1982. (The statistical assumptions on which these and other figures are based are stated at the beginning of the Appendix to this Report.) This volume of cases must be administered by a Board which, under Section 13 of the Code, may legally sit at one time in any one of nine different Panel arrangements. To deal effectively with its workload, the Board has adopted certain procedural approaches which will be described in general terms here, before the details of the Board's decisions in 1983 are reviewed.

A large number of cases are processed on a strictly administrative basis. The application or complaint is investigated by an Industrial Relations Officer of the Ministry of Labour who files a report with the Board. This report, together with the submissions of the parties, is reviewed by a Panel of the Board, usually consisting of the Chairman or one of the Vice-Chairmen. In cases that are clear and uncontested a decision is made without a hearing.

In cases which are contested, the Board attempts to achieve a settlement before proceeding to the stage of a formal hearing and adjudication. This settlement procedure involves an attempt at mediation by the Industrial Relations Officer, by the Registrar and his staff, and/or by a Panel of the Board at a hearing. This policy is especially important in the following

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* Including some applications carried over from 1982.

areas of the Board's work: unfair labour practice complaints, disputes under a collective agreement brought to the Board under Section 96(1), and strikes and picketing complaints. In these areas, the Board successfully achieves a voluntary accommodation in approximately two-thirds of the cases. (The exact figures in each category are reproduced later in the Report. See Table 4.)

Hearings

Finally, significant and contested cases which are not settled may be the subject of a hearing before the Board. Hearings are conducted by a Panel consisting sometimes of three members, and sometimes of one. To accommodate the parties to a dispute, hearings are often held at their request on short notice and at various places throughout the Province. In 1983, the Board held 319 formal hearings (an increase of 57 from the previous report year). In addition, the Board often arranges informal meetings between the parties and one or more Board members, with the intention of forestalling formal litigation.

Published Decisions

In contested cases that are unresolved by the parties and which involve significant issues of policy, the Board's general practice has been to give extensive written reasons for its decision. These reasons explain the Board's finding to the immediate parties and lay down general guidelines about the Board's policy and interpretation of the Code. The reasons are made available to unions, employers, counsel, and other interested parties.

In 1983, the Labour Relations Board undertook an extensive review of the process of publishing decisions. It sought and received input from the labour relations community, including employers, trade unions, lawyers, practitioners, and virtually all recipients of Board decisions. As a result of this investigation, the Board has now decided to alter its present system and publish a single format for decisions which contain reasons. There will of course be a number of administrative decisions which will continue to be published by the Board, but those decisions will not contain reasons and will have no precedential value other than to the particular parties to any application. The new format for decisions commenced April 1, 1983. The numerical sequence continued, using the Board's previous numbering system for its formal decisions. These decisions will be mailed to subscribers on a weekly basis. The cost of each decision will remain at $3.00, irrespective of its lengtn, for the time being. There has been no change in that fee for nine years.

Decisions which the Board believes will constitute important precedents for the future are published in a series entitled The Canadian Labour Relations Boards' Reports (New Series), which is published by Butterworth & Co. (Canada) Ltd.

Applications for Reconsideration

Under Section 36 of the Labour Code, a large number of applications are made to the Board for variances in the details of an existing certification or accreditation (and these are dealt with later in this report).

> 36. The board may, on application by any person, or on its own motion, reconsider a

> decision or order made by it or by a panel under this Act, and may vary or cancel the decision or order.

In addition, requests for reconsideration of decisions of the Board are also handled through the vehicle of Section 36. In 1983, the Board received 204 applications for reconsideration of this latter kind -- essentially appeals -- and 189* such applications were disposed of in the year. Of these, 22 were withdrawn, 129 were dismissed, and 38 resulted in a change in the original decision. (See Tables 1-4 and Table 13.) Most of these consisted of appeals from decisions where there had been no hearing in the first instance.

The procedure for review of decisions by the Labour Relations Board is as follows. Where the Board decides to hold a hearing on the original application (or complaint), it sits and hears the case in a Panel consisting of either one or three members. Whether or not a hearing has been held, a party has 15 working days from the issuance of the Board's decision to request reconsideration of that decision. In all cases, a Panel of the Board makes an initial determination about whether the stated basis for the reconsideration asserts a prima facie case for review of the original decision. Where a request for reconsideration is made, the parties are invited to file detailed written submissions, which can be developed further in oral argument if the Board decides to conduct a hearing. In a small number of cases which are of special significance to the labour relations community, the Board has invited representations from employer or trade union organizations to assist the Board in understanding the broader implications of its rulings.

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* Including some applications carried over from 1982.

This procedure for Board review provides a back-stop by which the Board is able to avoid or correct inadvertent errors and undo any miscarriages of procedural justice which may have occurred in the regular flow of its large caseload. It may also bring out into the open serious issues of law or policy which are implicit in the original decision and which a party contends have not been satisfactorily dealt with.

"Success" Rate of Appeals

	1979	1980	1981	1982	1983
Total Applications Disposed of	137	140	171	161	189
Number of These Withdrawn	24	18	34	18	22
Number of Applications Processed to a Final Decision	113	122	137	143	167
Number of Applications Resulting in a Revision of the Original Decision	33	46	37	18	38
"Success" Rate of Appeals	29%	38%	27%	13%	23%

With this preface regarding the Board's caseload and method of operation, we can now turn to the major areas of the Board's jurisdiction.

A. Certifications

The largest group of decisions made by the Board is in respect of applications for certification brought under Section 39 of the Code.

> 39. (1) Where a collective agreement is not in force and a trade union is not certified as bargaining agent for a unit appropriate for collective bargaining, a trade union claiming to have as members in good standing not less than 45% of the employees in that unit may at any time, subject to the regulations, apply to the board to be certified for that unit.
>
> (2) A trade union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining may, subject to the regulations, apply to the board to be certified for the unit where
>
> (a) a collective agreement is not in force, and either
>
> (i) 6 months have elapsed since the date of certification of a trade union for the unit; or
>
> (ii) the board has consented to an application before the expiry of the 6 months; or
>
> (b) a collective agreement is in force, only during the period.
>
> (3) Notwithstanding subsection (2), where
>
> (a) one or more applications have been made during a period, regardless of the outcome; or
>
> (b) the board, pursuant to section 57(3), certifies a council of trade unions as bargaining agent for a unit, or varies a certification by substituting for the trade union or trade unions named in it a council of trade unions as the bargaining agent for a unit,
>
> a trade union may not apply to be certified for that unit or, in the case of a council of trade unions, for a constituent part of the unit, until the second period after the date of the application, the certification or the variation of a certification, whichever is latest.

(4) Notwithstanding subsections (2)(b), 3(a) or 3(b),

(a) a trade union that is a party to a collective agreement, but is not certified for the employees covered by it, may apply to be certified at any time; and

(b) a council of trade unions comprised of trade unions that are parties to collective agreements may apply to be certified at any time in place of those trade unions,

(5) Two or more trade unions claiming to have together as members in good standing a majority of employees in a unit appropriate for collective bargaining may join in an application under this Part, and the provisions of this Act relating to an application by one trade union, and all matters or things arising from it, apply to the application and those trade unions as if one trade union were applying.

(6) In this section "period" means the seventh and eighth months in each year of a collective agreement or a renewal or continuation of it.

Section 39 provides for two different kinds of applications, each with its own legal requirements. Under Section 39(1), a union may seek certification for a group of previously unorganized employees, i.e., those not subject to an existing certification or collective agreement. Section 39(1) provides that, in order for a union to make such an application and be entitled to at least a representation vote, it is required to have a minimum membership support of 45%. Section 39(2) provides that a union may seek certification for a group of employees already represented by another union. The minimum membership requirement in such cases is more than 50% and the application is subject to certain timing requirements, i.e., it must be made at specified intervals following the earlier certification or during the term of a collective agreement. Section 39(5) makes special provision for a joint application

for certification by a number of unions. This Section was not used in the report year 1983.

The Board processed 678 certification applications in 1983. This represents a decrease from the 916 applications processed in the report year 1982. Of the 678 applications processed in 1983, 115 were withdrawn (for a variety of reasons) leaving 563 to be formally decided by the Board. The majority of this number, 445 to be exact, were applications made in respect of previously unorganized employees. The remainder, 118 in number, involved employees then represented by a union.

Of the 445 applications under Section 39(1), a total of 38 were dismissed for reasons enumerated in Table 7. A total of 16 applications were found to be beyond the Board's jurisdiction, either on constitutional grounds or based on the definition of "unit" and/or "trade union". In another seven cases, applications were rejected in circumstances either where the employees were to be represented by a different union or where an existing certification was varied to include the employees for whom the application was made. Accordingly, of those cases within the Board's jurisdiction, 15 certification applications (3.5%) were denied in situations where the result was to leave the employees without any union representation.

The Board disposed of another 118 certification applications under Section 39(2) in respect of employees already represented by another union. This number represented almost 21% of the total certification decisions in 1983. One hundred and eleven applications involving presently certified bargaining units were contested. The remaining seven represented those applications which were either uncontested or made in an attempt to fragment or enlarge an existing unit. Of the 118 applications, 113 were made during the term of an existing

collective agreement. The applicant union was successful in obtaining certification in 34 of the 118 cases. In three cases, the application for certification was dismissed but an existing certification was varied to include the employees. The incumbent union retained its certification in the remaining 81 cases.

Since the subject of certification applications under Section 39(2) (or "raids" as they are commonly termed) has continued to generate considerable discussion in the labour relations community in British Columbia, it may be useful to present the pertinent data regarding the number of employees involved in such cases. In 1983, applications under Section 39(1) involved 6284 employees, of whom 4951 obtained union representation. By contrast, inter-union contests under Section 39(2) involved 3494 employees, with a resulting change in union representation for 1134 of these employees. (See Table 8.) A review of the Board's files indicates that, of the total 111 cases and 3494 employees, five inter-union rivalries resulted in more than one application and affected 2503 employees (72%).

Inter-union contests between the Hotel & Restaurant Employees' & Bartenders' Union, Local 40 ("Hotel & Restaurant Employees") and the B.C. Hospitality Workers Union produced 57 applications involving 1078 employees; between "Hotel & Restaurant Employees" and the Canadian Hotel and Allied Workers Local 1, Canadian Association of Industrial, Mechanical and Allied Workers, 32 applications involving 1198 employees; between "Hotel & Restaurant Employees" and the Canadian Brotherhood of Railway, Transport and General Workers, eight applications involving 183 employees; between the Canadian Moulders & Industrial Workers' Union and the International Association of Bridge, Structural & Ornamental Iron Workers,

two applications involving 38 employees; between the Construction & General Labourers' Union and the Tile, Marble, Terrazzo Finishers, Shopworkers and Granite Cutters International Union, two applications involving six employees. The balance of the contests affected a wide variety of unions.

In 1983, the number of employees receiving certification was 6099, a decrease from the 10640 employees receiving certification in 1982. The number of employees involved in a contested change of union representation decreased from 4175 in 1982 to 1134 in 1983.

B. Representation Votes

In 1976, the Labour Relations Board set down in a formal judgment (Plateau Mills Ltd. and the International Woodworkers of America, Local 1-424, BCLRB No. 87/76, [1977] 1 Can LRBR 82) its guidelines and policy regarding the conduct of representation votes. The Board policy described there remains the same, notwithstanding the subsequent amendments in respect of union membership requirements.

Section 45 of the Code contains the criteria which govern the Board's disposition of certification applications.

> 45. (1) Where the board is satisfied that on the date it receives the application for certification more than 55% of the employees in the unit are members in good standing of the trade union, or a majority wish to be represented by the trade union, and that the unit is appropriate for collective bargaining, the board shall certify the trade union as bargaining agent for the unit.
>
> (2) In deciding whether a person is a member in good standing of a trade union, the board may decide the question without regard to the consti-

tution and bylaws of the trade union.

(3) For the purposes of subsection (1), where a representation vote is taken, a majority shall be determined as the majority of the employees in the unit who cast ballots and who vote to elect the trade union as bargaining agent for the unit.

(4) Notwithstanding subsection (3), where

(a) a representation vote is taken; and

(b) less than 55% of eligible employees cast ballots,

the board may direct that another representation vote be taken, and in that event subsection (3) applies.

Section 45(1) contains two alternative standards. Either the applicant union must have more than 55% membership support at the time of application, or a majority of the employees in the proposed unit must express their wish to be supported by the union through a representation vote. If the Board finds through its investigation that the union has as members between 45% and 55% of the employees, then Section 43(2) directs that a vote shall be taken among the employees in the unit. Section 45(3) specifies that, for purposes of certification applications, the majority judgment in a representation vote is based on the number of employees who cast ballots. However, the 1977 amendments added a proviso to that basic tenet (see Section 45(4)).

If a union seeks certification without a representation vote, the Board must be satisfied that, on the date it received the application, more than 55% of the unit employees were members in good standing. If the Board is thus satisfied, Section 45(1) of the Code requires the Board, if it is also satisfied that the unit is appropriate for collective bargaining, to certify the applicant trade union. Nevertheless, even in the situation where the trade union has more than 55% of the employees as members, it has been argued that the Board should

order a vote as a matter of course upon the request of an employer or a petition of the employees. Section 43(1) enables the Board, in any case, to conduct a representation vote to determine the employees' wishes.

> 43. (1) The board, to determine whether the employees in an appropriate bargaining unit wish to have a particular trade union represent them as their bargaining agent, may order that a representation vote be taken, in accordance with the regulations, among the employees of the unit.

However, reading that subsection together with Section 45(1), the Board has concluded that it is not the policy of the Code to require a vote as a pre-condition for certification of a previously unorganized unit of employees. As the Board explained in Plateau Mills, the Code assumes that when a majority (now more than 55%) of employees have signed union membership cards, it constitutes a valid expression of their wish that the trade union represent them. Once more than 55% of the employees have made their initial choice in favour of the applicant union, the Code confers exclusive bargaining authority on the union (Section 46) and gives it at least ten months within which to exercise that authority (Section 52).

These are the reasons for the general rule that a representation vote is not a necessary standard vehicle for obtaining certification. In Plateau Mills, however, the Labour Relations Board did outline some special cases where it orders representation votes under Section 43: for example, if there is concern about fraud or coercion in the manner in which employees were signed up as members; or if the unit has been substantially enlarged between the date of the application for certification and the date of certification itself.

There are instances, other than a single application from a trade union for certification of previously unorganized employees, where the Board would use representation votes. In a number of applications, two unions may satisfy the majority membership requirements under Section 45, in which case the Board cannot certify one union under Section 45 on this basis alone. Except in the most unusual circumstances, the Board will order a vote in such a case between the two competing unions. Ten months or more after certification, the Board may use a vote of the employees in the bargaining unit to determine whether the trade union has ceased to represent a majority of the employees (Section 52(2)). Under Section 53(2), a vote may be ordered when a trade union applies for succession rights and obligations on the sale or transfer of the business of the certified employer. Before the Board declares that there has been a merger, amalgamation or transfer of jurisdiction among trade unions, it may order a vote of the affected employees. (Section 54(2).) Section 40(3) of the Code makes it mandatory for the Board to conduct a representation vote when it has before it an application for a multi-employer certification. Votes are used to determine consent to trade union representation of dependent contractors (Section 48(1)) and of professional employees (Section 153). If a trade union so requests, a representation vote may be taken prior to the determination of the appropriate bargaining unit on a certification application (Section 44(1)). Finally, within the framework of a Section 57 enquiry, a representation vote may be conducted. (For statistics on the Board's use of the representation votes described here, see Statistical Appendix page 74, and Table 9.)

C. Unfair Labour Practices and Remedies

Section 2 of the Labour Code states that "every employee is free to be a member of a trade union and to participate in its lawful activities". The scope of this freedom is defined and protected by a network of legal restrictions on the conduct of either employers or trade unions which may infringe upon the exercise of such freedom.

Section 5 prohibits coercion or intimidation of any kind which might compel or induce a person to be or not to be a union member.

> 5. A person shall not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become, refrain from becoming or continue or cease to be a member of a trade union.

Section 3 contains a series of specific directives to employers which are of special importance in a union organizing campaign.

> 3. (1) An employer or a person acting on his behalf shall not participate in or interfere with the formation oradministration of a trade union or contribute financial or other support to it.
>
> (2) An employer may, notwithstanding this section, permit an employee or representative of a trade union to confer with him during working hours or to attend to the trade union's business during working hours, without deducting time so occupied in computing the time worked for the employer and without deducting wages for that time.
>
> (3) An employer or a person acting on his behalf shall not
>
> (a) discharge, suspend, transfer, lay off or otherwise discipline an employee, refuse to employ or continue to employ a person or discriminate against a person in regard to employment or a

condition of employment because the person

(i) is or proposes to become, or seeks to induce another to become, a member or officer of a trade union; or

(ii) participates in the promotion, formation or administration of a trade union;

(b) impose a condition in a contract of employment that seeks to restrain an employee from exercising his rights under this Act;

(c) seek by intimidation, by dismissal, by threat of dismissal, or by any other kind of threat, or by the imposition of a penalty, or by a promise, or by a wage increase, or by altering any other terms of employment, to compel or to induce an employee to refrain from becoming, or continuing to be, a member or officer or representative of a trade union;

(d) use, or authorize or permit the use of, a professional strike breaker or an organization of professional strike breakers; or

(e) refuse to agree with a trade union, certified as the bargaining agent for his employees under this Act who have been engaged in collective bargaining to conclude their first collective agreement, that all employees in the unit, whether or not members of the trade union, but excluding those exempted under section 11, will pay union dues from time to time to the trade union,

but, except as expressly provided, this Act shall not be interpreted to limit or otherwise affect the right of the employer to

(f) suspend, transfer, lay off or discharge an employee for proper cause;

(g) communicate to an employee a statement of fact or opinion reasonably held with respect to the employer's business; or

(h) make a change in the operation of the employer's business reasonably necessary for the proper conduct of that business.

The employer may not interfere in the formation of the union or favour one union over another; it may not refuse to hire because of union membership or manipulate working conditions to discourage unionization; it may not threaten loss of jobs or plant shutdown in the event of certification. Of prime importance is the legislation governing the discharge of an employee for union membership or activities. Recognizing the serious impact this can have on employees and the difficulty the union has in establishing the employer's motivation, the Code places on the employer the onus to establish affirmatively that such a discharge did not stem from an improper anti-union purpose (see Section 8(6)).

The employer's right to run its business efficiently and without the interference of a union organizing campaign during working hours is protected by Section 4.

> 4. (1) Except with the employer's consent, a trade union or person acting on its behalf shall not attempt, at the employer's place of employment during working hours, to persuade an employee of the employer to join or not join a trade union.
>
> (2) Where employees reside on their employer's property or on property to which he or another person has the right to control access or entry the employer or other person shall on the board's direction permit a representative authorized in writing by a trade union to enter the property to attempt to persuade the employees to join a trade union. If directed by the board and on request by the representative, the employer shall provide him with food and lodging at the current price, and of a similar kind and quality as that provided to the employees.

Once a trade union is certified, Section 6 requires both the employer and the union to bargain in good faith and make every reasonable effort to conclude a collective agreement.

> 6. A trade union or employer shall not fail or refuse to bargain collectively in good faith in the Province and to make every reasonable effort to conclude a collective agreement; but where a trade union and the employer have concluded a collective agreement outside the Province, it is invalid in the Province until a majority of the employees in the Province covered by the agreement ratify it.

Since certification gives the union the exclusive legal authority to bargain on behalf of all employees, Section 7 prohibits the union from acting in a manner which is arbitrary, discriminatory, or in bad faith, in the representation of any of these employees.

> 7. (1) A trade union or council of trade unions shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employees in an appropriate bargaining unit, whether or not they are members of the trade union or of a constituent union of the council.
>
> (2) An employers' organization shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employers in the group appropriate for collective bargaining.

What are the steps which the Board can take under Section 8(4) of the Code when it finds that a violation of the law has occurred? The basic remedy under the statute is a cease and desist order under Section 8(4)(a) against illegal conduct by a trade union, an employer, or any other person. This power of the Board is supported by further remedies specifically tailored to certain problems. The one most often used in practice, because of the large number of discharge cases handled, is the Board's power under Section 8(4)(c) to order reinstatement and/or back pay for an employee discharged or otherwise disciplined contrary to Section 3(3)(a). Also useful

is the remedy contained in Section 8(4)(d) of the Code under which the Board may forestall, for as long as 60 days, any employer attempts to influence employee freedom of choice by altering wages or other working conditions. A remedy of considerable value (and some controversy) is Section 8(4)(e) which gives the Board discretion to certify or to refuse to certify an applicant trade union in circumstances where an unfair labour practice has made it difficult to determine the true wishes of the employees.

In 1983, the Board received 319 complaints of violations of these several provisions of the statute, 7% less than the number received in 1982. The Board disposed of 333 complaints; 211 were settled without adjudication, usually through the assistance of an Officer of the Board and two were withdrawn prior to any significant Board involvement. Of the remaining 120 complaints formally decided by the Board, 94 were rejected and 26 resulted in findings of unfair labour practices. Hearings were held for 102 applications and 100 of the 120 Board decisions were accompanied by published reasons.

Section 3

The source of the largest number of unfair labour practice charges is some type of employer activity designed to discourage employees from unionization. Of the 333 unfair labour practice cases disposed of by the Board in 1983, 155 alleged violations of Section 3 of the Code. Of the 155 complaints, 81 alleged dismissals contrary to Section 3(3)(a), while another 74 complained of employer tactics short of actual discharge. Of these 74 complaints, 67 involved allegations of improper attempts to induce or compel abstention from union membership and seven were based on alleged interference with trade union administration.

The most numerous and significant unfair labour practice complaint is that concerning discharge for union involvement, alleged in 81 of the 333 complaints. Almost all of these 81 complaints were brought by trade unions; only one application was filed by the individual affected. Settlements were reached with the assistance of the Board or one of its Officers in 61 cases. Twenty discharge cases required adjudication by the Board.

Twenty-five of the 81 dismissal complaints were withdrawn by the unions involved and Board records do not indicate the fate of the dismissed employees. Of the remaining 56 dismissal complaints, including settlements and decisions, 47 culminated in some form of positive relief for at least some of the employees affected.

The Board's power under Section 8(4)(c) to order reinstatement and/or back pay was the basis of 11 Board decisions involving 57 employees. Thirteen of these employees were reinstated with back pay. Forty-two employees were reinstated without back pay and two received compensation without reinstatement.

Eighteen complaints requested certification under Section 8(4)(e) in conjunction with a complaint under Section 3. In one case, a representation vote was ordered but the employees voted against the union. We note that in four of the cases, the union did secure certification under Section 45 of the Labour Code.

Section 4

Ten complaints were filed by employers alleging that unions had been organizing on the employers' properties during working

hours. Eight cases were settled and the Board dismissed the other two applications.

Section 5

In 1983, the Board dealt with seven complaints under Section 5 of the Labour Code. Five complaints were filed by an employer against a union. Two cases were settled and the other three cases were dismissed. One complaint was filed by a union against an employer and was settled. One complaint filed by a union against a rival union was dismissed.

Section 6

There were 36 complaints disposed of alleging a refusal to bargain in good faith as required by Section 6 of the Code. Of the 36, 31 were filed by unions and five by employers.

Of the 36 charges of failure to bargain in good faith, 28 were voluntarily resolved. Five of these complaints were rejected by the Board. In two cases, a violation was deemed to have occurred and in one case, the dispute was resolved with a consent order.

Section 7

In 1983, the Board disposed of 124 complaints by individual employees alleging a violation by their union bargaining agent of the duty of fair representation contained in Section 7 of the Code. Two of these were withdrawn prior to any significant Board involvement. Fifty-five of these complaints were volun-

tarily resolved through the efforts of an officer or a member of the Board. Sixty-one complaints were rejected by the Board. In six cases, a violation was deemed to have occurred. In two of these cases, the union was ordered to proceed to arbitration, in one case, to compensate the employee for lost wages and in one case, to alter a discriminatory clause in the collective agreement. In the remaining two cases, submissions were invited regarding a remedy and these had not been finalized at the end of the report year.

The Board also dealt with one complaint pursuant to Section 7 filed by an employer against an accredited employer organization. This complaint was settled.

Section 70

Although not located in the unfair labour practice part of the Code, the controversial power of "first contract arbitration" conferred on the Board by Section 70 may usefully be reviewed here. As a practical matter, this power is designed as a remedy for those cases where there were difficulties between the parties at the representation stage and they have not been able to engage in serious, good faith bargaining following certification.

Following referral of the dispute by the Minister of Labour, the Board has the power to settle the terms of the collective agreement for a period of one year. The Board has imposed 12 contracts since Section 70 was introduced. However, it should be noted that the Board does not automatically impose a first collective agreement on the parties, even where a persuasive application is made. Instead, it makes a determined effort to secure a voluntary settlement of the agreement. The

objective of Section 70 is to foster an enduring collective bargaining relationship. In the Board's view, a solution agreed to by both parties is a much better foundation for such a relationship than an order imposed by the Board.

In 1983, there were no applications under Section 70 referred to the Board by the Minister.

D. Applying the Code to the Bargaining Relationship

Once the issue of union representation is disposed of, the Board is required to apply the provisions of the Labour Code to a large number of issues which may arise in a collective bargaining relationship.

Sections 51 and 61

Section 51 of the Code requires the consent of the Board to changes in working conditions while a certification application is pending.

> 51. (1) Where an application for certification is pending, a trade union or person affected by the application shall not declare or engage in a strike, an employer shall not declare a lockout, and an employer shall not increase or decrease rates of pay, or alter a term or condition of employment of the employees affected by the application, without the board's written permission.
>
> (2) This section shall not be construed as affecting the right of an employer to suspend, transfer, lay off, discharge or discipline an employee for proper cause.

Section 61 imposes the same requirement for four months following certification and notice to bargain. The Board's policy under these Sections is to enquire from the trade union whether it objects to the proposed alteration. Ordinarily, the union does not object and the application is granted. In those cases where the union does object with reasons, the Board usually withholds permission. This report year saw 23 applications disposed of under these Sections. Of the 23 applications, five were withdrawn, 15 were granted and three were rejected.

Section 34

Another question which may arise during a certification application is whether certain individuals are "employees" under the Code and, if so, whether they are properly included in a bargaining unit. The policy of the Board is not to proceed with such questions until after the certification is completed, except in those rare cases where the status of certain individuals in question may affect one way or the other the majority status of the union. Following certification, either the trade union or the employer may apply to the Board under Section 34 for a determination of the position of the person under the Code and the bargaining unit. Such questions also arise during the course of the collective bargaining relationship when new persons are hired or job functions changed. In 1983, a total of 118 applications under Section 34, involving this issue, were disposed of by the Board. The practice of the Board is to have an Industrial Relations Officer investigate the factual nature of the individual's position and make a report. An additional 41 applications referred to other questions under Section 34 of the Code.

Once collective bargaining has been established, material changes in circumstances can require a decision of the Board adjusting the certification to the new situation. Most of these take the form of an application to the Board under Section 36 for a variance of a certification or accreditation. A number of cases involve applications under Sections 53 and 54, the successorship provisions of the Code, and under Section 37, the "common employer" provision.

Variance of Certification

In 1983, the Board received 404 applications for certification variance, an increase of 14% from the 1982 figure. Most of these applications involve a simple change in the name or address of the employer or the trade union, and are simply processed. In a few cases, however, the requested variance would have the effect of increasing or decreasing the number of employees in the existing bargaining unit, and these are often contested. The policy of the Board in these cases is to exercise its discretion under Section 36 in accordance with the principles established by the Code for certification or decertification proceedings, and particularly to investigate the wishes of the group of employees concerned.

Successor Status

Quite frequently, there is a fundamental change in the identity of a party to the certification. Many of these occur as a result of the sale of its business by the employer. Section 53(1) provides for the automatic transfer of the certification and the collective agreement in such cases.

53. (1) Where a business or part of it or a substantial part of its entire assets are sold, leased, transferred or otherwise disposed of, the purchaser, lessee or transferee is bound by all proceedings under this Act before the date of the disposition, and the proceedings shall continue as if no change had occurred; and where a collective agreement is in force, it continues to bind the purchaser, lessee or transferee to the same extent as if it had been signed by him.

(2) Where a question arises under this section, the board, on application by any person, shall determine what rights, privileges and duties have been acquired or are retained, and for this purpose the board may make inquiries or direct that representation votes be taken as it considers necessary or advisable.

(3) The board, having made an inquiry or directed a vote pursuant to this section, may

(a) determine whether the employees constitute one or more units appropriate for collective bargaining;

(b) determine which trade union shall be bargaining agent for the employees in each unit;

(c) amend, to the extent it considers necessary or advisable, a certificate issued to a trade union or the description of a unit contained in a collective agreement;

(d) modify or restrict the operation or effect of a provision of a collective agreement in order to define the seniority rights under it of employees affected by the sale, lease, transfer or other disposition; and

(e) give directions the board considers necessary or advisable, as to the interpretation and application of a collective agreement affecting the employees in a unit determined under this section to be appropriate for collective bargaining.

In cases where the application of Section 53 is questionable, particularly where there may be an overlapping of bargaining rights, the parties may apply to the Board under Section 53(2) for a clarification of the issues. Section 53(3) gives the

Board greater flexibility in such cases. The Board received 231 applications under Section 53 and 204 applications under Section 54 (which deal with one union applying to succeed another) during 1983, an increase from the 269 received under both Sections in 1982.

Section 37

Less often, a change in the identity of an employer results from the fact that a single management group operates through two or more legally distinct business enterprises, usually companies or partnerships. When such corporate interrelationships threaten existing or impending rights or obligations under the Code, the Board may act under Section 37 to treat all of the enterprises as one employer for the purposes of the Code.

> 37. Where, in the board's opinion, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or a combination of them, under common control or direction, the board may treat them as constituting one employer for the purposes of this Act.

In 1983, the Board disposed of 60 applications under this Section, 28 of them involving enterprises in the construction industry. Twenty-one applications were settled or withdrawn. This was in part due to the procedures developed by the Board to expedite the applications arising in the construction industry and to promote the voluntary settlement of these cases. Of the remaining 39, the Board granted 11 with respect to at least some of the enterprises named in the application. The balance were rejected.

E. Administration of the Collective Agreement

Under Part 6 of the Labour Code, the preferred vehicle for resolution of disputes under a collective agreement is grievance arbitration. But under the statute, the Board does have a significant role to play in the administration of the collective agreement. In this part of the report, we deal with two major areas of Board involvement in this process.

Section 96

Section 96(1) gives the Board a comprehensive original jurisdiction in resolving grievances arising under the provisions of a collective agreement.

> 96. (1) Notwithstanding the provision required or prescribed under section 93 or 94,
>
> (a) if at any time prior to the appointment of an arbitration board or other body, either party to the collective agreement requests the board in writing to appoint an officer to confer with the parties to assist them to settle the difference, and the request is accompanied by a statement of the difference to be settled, the board may
>
> (i) appoint that officer; or
>
> (ii) proceed as provided in paragraph (c);
>
> (b) where an officer is appointed under paragraph (a), the officer shall, after conferring with the parties, report to the board;
>
> (c) where the board decides, under paragraph (a) (ii) to proceed under this paragraph, or the officer's report is made under paragraph (b), the board may, if it believes the difference, when referred to the board, is arbitrable,

(i) refer the difference back to the parties; or

(ii) inquire into the difference, and after the inquiry it considers adequate, make an order for final and conclusive settlement of the difference;

(d) where the board refers the difference back to the parties under paragraph (c)(i), the parties shall follow the procedure in the provision required or prescribed under section 93 for final and conclusive settlement of the difference;

(e) where the board

(i) inquires into the difference under paragraph (c)(ii); or

(ii) advises the parties that in its opinion the difference is not arbitrable,

neither the Arbitration Act nor any other procedure for settlement of the difference applies; and

(f) where the board inquires into the difference under paragraph (c)(ii), it may exercise all the powers of an arbitration board under this Part, and its order for final and conclusive settlement of the difference is final and binding on the parties and on all other persons bound by the collective agreement, and all those parties and persons shall comply with the order.

This procedure has been used consistently both by trade unions and employers since it was first introduced into British Columbia law in 1963 in the form of Section 22(4) of the old Labour Relations Act*. In this report year, the number of

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* It should be noted that the availability of Section 96(1) as an alternative to arbitration is not mandated by law. Section 96(2) of the Code allows the parties, by specific agreement, to exclude the Board from any role in resolving grievances under their collective agreement.

applications filed with the Board decreased from 713 in 1982 to 628 in 1983.

Under Section 96(1), a party to a collective agreement may request the Board to appoint an officer to assist in the settlement of a difference arising during the term of a collective agreement. The Board is not required to appoint an officer simply because a party to an agreement has made such a request. But its practice has been to make an appointment if the difference between the parties appears to be arbitrable under the agreement and if all the steps in the grievance procedure prior to arbitration have been exhausted. This is because the Board considers that the primary purpose of Section 96 is to offer the parties help and advice in resolving their differences without the expense and delay of an arbitration hearing.

In the first eight report years, officer mediation under Section 96 of the differences arising under a collective agreement achieved a settlement of approximately two-thirds of the applications made to the Board. In 1982, the proportion settled was 71% of the total applications disposed of and in 1983, this proportion decreased to 66%.

The Board disposed of 694 applications under Section 96(1) in the report year. Of these, a total of 461 were voluntarily settled, almost all through the efforts of an officer. This very substantial rate of officer settlement is of major benefit to the labour relations community in British Columbia in two respects. The parties reach a voluntary accommodation of their differences under their own contract rather than having a binding decision imposed by an outside legal authority. In the process, a potentially serious over-loading of the arbitration procedure is avoided.

If the officer appointed by the Board does not achieve a voluntary settlement of an arbitrable difference, the Board may either refer the difference back to the parties or inquire into the difference itself and make an order for final and conclusive settlement of the difference. In exercising its discretion about how to proceed in respect of unsettled Section 96 applications, the Board takes account of such factors as the nature and significance of the particular grievance, the character of the bargaining relationship between the parties and the relative capability of Board procedure to achieve a satisfactory disposition of the dispute.

In a considerable number of cases, the Board exercises its powers under Section 96(1)(c)(ii) to make a binding decision on the basis of the officer's report and submissions from the parties. Generally speaking, these involve minor grievances which the Board anticipates would not go to arbitration or which would place a disproportionate burden on a party required to go to arbitration for a decision. The parties require an authoritative judgment on the merits of their case and a reasonable appraisal of these merits can be made on the basis of investigation and written submissions. Typical examples of such grievances are trade union claims against an insolvent employer for unpaid wages or fringe benefits, or for failure to deduct and remit union dues; differences about minor discipline; and disputes as to the proper interpretation of specific contract language. The Board was able to dispose of 37 applications under Section 96(1) by administrative decision in the report year.

Each year, there is a sizeable number of grievances which an officer is not able to settle under Section 96 and where his report indicates that the matter is of considerable significance to the parties under the collective agreement and thus

should receive the full consideration of an oral hearing. The Board's normal practice under Section 96(1)(c) is to refer these matters back to the parties for an arbitration hearing. This policy embodies the statutory principle that adjudication of key disputes under the agreement should be conducted in an environment which is under the control of the same parties who have negotiated the agreement. As well, the policy reflects the need for the proper allocation of the Board's own scarce hearing time amongst the approximately five thousand cases which come before it each year. This policy is applied in such typical cases as these: unresolved disputes about the discharge of an employee where the facts are in dispute; unresolved seniority grievances in connection with a layoff or promotion where the relative qualifications of the affected employees are at issue; cases involving major issues of contract interpretation which may be of significant value as a future precedent and require reference to extrinsic evidence and argument about the relevant arbitral jurisprudence; situations where the parties have developed their own specialized dispute resolution procedures, such as jurisdictional disputes in the construction industry, or specialized job evaluation programs. In 1983, the Board referred 178 such cases back to the parties for arbitration under their collective agreement.

There is one important exception to the Board's policy that grievances which require a formal hearing should be held under the arbitration procedure established under the collective agreement. Where the difference between the parties raises an issue of general importance within the statutory responsibilities of the Board, the matter will normally be set down for a hearing in front of a Panel of the Board which will then proceed to adjudicate the grievance and prepare formal reasons for its decision. The following are examples of cases in which the Board has exercised its discretion under Section 96(1)(c)

to adjudicate the grievance itself: grievances about an issue, for example a discharge or work assignment, which has led to a wildcat strike or other form of industrial unrest; grievances which are tied to unfair labour practices, for example the alleged discharge of an employee because of union activities or the alleged breach by a union of its duty of fair representation to the grievor; grievances in which the primary issue in dispute is the proper application of key statutory concepts, for example "employee", "dependent contractor", "collective agreement"; grievances involving major issues of law and policy relating to the collective agreement and its proper interpretation, for example the proper scope of disciplinary demotion. In 1983, formal hearings by the Board resulted in the issuance of seven orders under Section 96(1)(c)(ii).

In summary, the Board disposed of 694 applications under Section 96(1) in the report year. Of these, a total of 461 were voluntarily settled, almost all through the efforts of an officer but, on a number of occasions, through the intervention of a Panel of the Board. Six of the applications were withdrawn, five were determined to be non-arbitrable and 178 were referred back to the parties. The remaining 44 were adjudicated by the Board. Thirty-seven of the latter turned on issues which could be disposed of on the basis of the officer's report and written submissions from the parties.

Tables 10 to 12 state in detail the results in applications brought under Section 96. Table 10 sets out the nature of the disposition and indicates which party was the beneficiary. Table 11 gives a breakdown of the cases by reference to the type of problem in dispute. Table 12 gives the industrial composition of the cases and the number of applications brought by unions and employers in each industry.

Over the last nine report years, the relative proportions in the origin of applications under Section 96(1) have fluctuated only slightly with 91% to 96% of the applications coming from unions and 4% to 9% coming from employers. In 1983, 658 of the 694 applications disposed of came from unions (95%) and 34 (5%) came from employers. Two applications were filed jointly by a union and an employer.

An analysis of the 628 applications received by the Board in 1983 (see Table 16, column 4) reveals that six unions filed over 30 applications. The Hotel & Restaurant Employees' & Bartenders' Union filed 135 applications (21% of the total); the United Brotherhood of Carpenters and Joiners of America filed 62 applications (10% of the total); the United Steelworkers of America filed 47 applications (7% of the total); the Laborers' International Union of North America filed 38 applications (6% of the total); the International Union of Operating Engineers filed 34 applications (5% of the total); the Canadian Union of Public Employees filed 32 applications (5% of the total). While these are large unions, it is observed that each union has a considerable number of relatively small bargaining units, each with its own (and often unique) collective agreement.

Of the 434 employers who were respondents to union complaints disposed of by the Board in 1983 (see Table 12), a total of 398 employers (or 92%) responded to either one or two complaints. Indeed, only four employers were the respondents to more than ten applications. Turning to the 34 cases disposed of in 1983 in which the employer filed the application, there is the same wide distribution amongst the parties involved. None of the 32 employers who filed Section 96(1) applications brought more than two applications.

The Board continues to conclude, on the basis of these findings of the wide distribution in the use of Section 96(1) either by unions, employers, or industry, that there is no specific abuse of the procedure.

In early 1976, the Board issued its first official policy statement under Section 27 of the Code.

> 27. (2) The board may formulate general guidelines to further the operation of this Act; but the board is not bound by those guidelines in the exercise of its powers or the performance of its duties.
>
> (3) In formulating general guidelines the board may request that submissions be made to it by any person.
>
> (4) The board shall make available in writing for publication all general guidelines formulated under this section, and their amendments and revisions.

That statement (BCLRB No. 12/76, [1976] 2 Can LRBR 17) examines the powers of the Board under Section 96 and attempts to formulate general guidelines for the exercise of the Board's discretion. In addition, the policy statement sets out in detail the Board's views of the purpose of the Section 96 procedure and how, within the larger framework of the Code, the use of that procedure may promote the constructive settlement of grievances and thus secure and maintain industrial peace during the term of the collective agreement.

Section 108

The Board has another major role to play in the administration of the collective agreement under Part 6 of the Labour Code. Section 108 of the Code, enacted in mid-1975, gives the

Board authority to review arbitration awards delivered under collective agreements.

> 108. (1) On application by a party affected by the decision or award of an arbitration board, the board may set aside the award, remit the matters referred back to the arbitration board, stay the proceedings before the arbitration board, or substitute the decision or award of the board for the decision or award of the arbitration board, on the ground that
>
> (a) a party to the arbitration has been or is likely to be denied a fair hearing; or
>
> (b) that the decision or award of the arbitration board is inconsistent with the principles expressed or implied in this Act, or another Act dealing with labour relations.
>
> (2) An application to the board under subsection (1) must be made in accordance with the regulations.

The Board has issued a number of major decisions outlining the view that it takes of Part 6 of the Labour Code as a whole, in terms of the scope of the Board's supervision of arbitrators contemplated by the Code.

In its first major decision under this provision, Simon Fraser University, BCLRB No. 16/76, [1976] 2 Can LRBR 54, the Board indicated clearly that Section 108 does not afford the losing party in an arbitration proceeding a full-blown right of appeal to the Board on the merits of the arbitrator's decision. The Board carefully limits its enquiry to whether the party has been denied a "fair hearing" (as found, for example, in Board of School Trustees of School District No. 68 (Nanaimo), BCLRB No. 68/76, [1977] 1 Can LRBR 39) or whether the award is inconsistent with the principles expressed or implied in the Code or any other legislation dealing with labour relations (as found, for example, in University of British Columbia, BCLRB No. 42/76,

[1977] 1 Can LRBR 13). Within those standards formulated in Section 108, the Board will not overturn an arbitration award on the basis of alleged mistakes in findings of fact or interpretation of contract terms.

In the report year, the Board received 64 applications under Section 108 and disposed of 66 such applications. Of the 66, a total of 31 were brought by employers, 27 by unions, five by the grievors involved and three by accredited employers' associations. Seventeen dealt with arbitration awards regarding discharge grievances. Of the 66 applications disposed of by the Board in 1983, ten were withdrawn and 49 were dismissed.

The element of limited interference in grievance arbitration was reflected in the fact that in only seven applications was the decision of the arbitrator set aside. In three cases, the grievances were referred back to the arbitrator; in one case, the Board substituted another award. The other three applications all asked for a review of the same award but were filed separately by the employer, by an accredited employers' association and by an employee (not the original grievor) who suffered as a result of the award. The Board set aside the decision of the arbitrator and substituted another award.

Of the 56 applications decided by the Board, 12 were reviewed in a formal hearing and 52 were accompanied by reasons in a published Board decision.

F. Strikes, Lockouts and Picketing

The Board, charged with the primary responsibility for administering the law relating to strikes, lockouts and picketing in British Columbia, received 236 applications under Part 5

of the Labour Code in 1983 and disposed of 223 in the report year. The 223 cases dealt with by the Board included 126 concerning alleged illegal strike action, 18 concerning alleged illegal lockouts and 79 concerning only some form of picketing activity.

In exercising its jurisdiction in this regard, the Board balances attempts at speedy decision-making and its effort to deal effectively with the underlying factors which have produced the illegal work stoppage or picketing. Officers of the Ministry of Labour, as well as the Board's own staff and members are used by the Board in an attempt to achieve a satisfactory and mutually acceptable disposition of each dispute without the need for a formal hearing or adjudication. In 1983, this procedure led to a settlement of 153 applications (69%, considerably lower than the 80% in 1982), including 83 of the 126 strike applications, 13 of the 18 lockout applications, and 57 of the 79 applications in the picketing area. Thirty of these applications reached a formal hearing before an accommodation could be reached by the parties.

Where such voluntary disposition of an application is not achieved, a Panel is convened, evidence and argument is heard and a formal decision is made. In 1983, 70 applications led to formal adjudication by the Board, 50 resulted in Board orders and 20 were dismissed.

Strikes and Lockouts

A fundamental principle of the Labour Code is that the legality of a strike depends upon its timing. The use of this economic weapon is prohibited through much of the life of the collective bargaining relationship. In particular, Section 93

requires that all disputes arising under a collective agreement are to be resolved, without stoppage of work, either by arbitration or other techniques devised by the parties. Section 79(1) complements that requirement by prohibiting strikes during the life of a collective agreement. During the 1983 report year, the Board disposed of 126 applications in this area. Eight-three of these were settled and the Board adjudicated the remaining 43.

Of these 43 applications, 15 applications adjudicated alleged threatened or actual job action arising from the public sector dispute which took place in the first two weeks of November, 1983. (An additional nine adjudicated applications asked for picketing relief only and are dealt with under the Picketing section of this report.) In 11 of the 15 applications, the relief requested was granted wholly or in part, while in four cases, the requests for relief were denied.

Another three of the applications adjudicated asked for declaratory opinions regarding threatened job action arising from the public sector dispute which took place in the summer of 1983. The Board denied the relief requested in these three cases.

Of the remaining 25 applications, 14 alleged threatened or actual illegal job action during the term of a collective agreement contrary to Section 79(1).

In the 14 cases, actual or threatened work stoppages, work slowdowns or refusals to perform specific duties were generated by real or felt grievances on the part of the employees concerning the manner in which the contract was being administered or by clauses in the contract allegedly allowing such job action. In 12 of the 14 cases, the Board ruled a violation had

occurred or would occur. In another case, the Board issued a consent order to resolve the dispute. The Board rejected the application in one case because the job action did not constitute a strike under the Labour Code.

Even when no collective agreement is in force, the legality of a strike is subject to certain preconditions under the Code. The parties must have bargained collectively, in good faith, with respect to the dispute and must have failed to conclude a collective agreement. The trade union must conduct a strike vote among the employees in the unit affected and must give 72 hours written notice (or such longer period as may be directed by the Board under Section 81(4) of the Code) to the employer that a strike is to occur. If a mediation officer has been appointed in the dispute, the strike must be postponed until the officer has reported to the Minister and the union has been so advised. Only after each of these conditions has been satisfied does a strike become timely and legal. Ten of the 43 strike applications adjudicated by the Board in 1983 alleged a violation of one or another of these requirements. The Board ruled a violation had occurred in eight of these cases and dismissed the other two.

The remaining case requested relief under Section 90 of the Code from a certain declaration and involved parties not bound to each other in a collective bargaining relationship. The Board granted the relief requested.

The provisions of the Code with respect to the legality of employer lockouts mirror those which define the legality of employee strikes. During the 1983 report year, the Board disposed of 18 complaints alleging illegal lockouts. Thirteen of the 18 were settled without formal Board adjudication. In one case, the Board ruled a violation had occurred. The Board dismissed the remaining four cases.

Picketing

When parties to a collective bargaining relationship reach an impasse in negotiating the terms of their collective agreement, either side may, subject to the legal restrictions already noted, use the economic sanction of a work stoppage to enforce its demands. The employer is legally entitled to attempt to continue operations by replacing the strikers so long as he does not use professional strike breakers. The union, on the other hand, is entitled to attempt to stop the employer's efforts to maintain his operations. The primary measure recognized by the law for that purpose is peaceful picketing within the limits permitted by the Labour Code. In the 1983 report year, the Board disposed of 79 applications pertaining to picketing. Fifty-seven of these were settled and the Board adjudicated the remaining 22.

Picketing is legal only when it is carried on in connection with a lockout or a lawful strike. Therefore, picketing designed to force an employer to recognize the picketing union is prohibited by the Code. Of the 22 applications adjudicated by the Board concerning picketing, none alleged that the picketing was organizational in purpose and therefore outside the scope of permitted picketing under the Code.

Another principle of the Code is that the legitimate target of picketing is the struck employer and not an uninvolved third party. The one apparent exception in the Code, the "ally doctrine" actually seems to prove the rule. By involving itself in a bargaining dispute on the side of the struck employer against the striking union members, the ally forfeits its neutral status and exposes itself to the same kind of peaceful picketing and economic pressure as the struck employer. Two applications adjudicated in 1983 dealt with anticipated picket-

ing directed at secondary employers which the striking unions alleged had allied themselves with struck employers. Both applications were filed by a union requesting declarations regarding the "ally" status of certain employers. The Board rejected both applications on the grounds the employers were not allies of the struck employer.

Where several employers share a common site of operations, a picket line directed at one of these employers is not a discriminating instrument likely to affect only its intended target. Accordingly, the Code confers on the Board a broad discretion to give precise directions confining the impact of picketing to the struck employer and insulating third party employers from its damage. The Board disposed of 12 such applications by secondary employers in 1983 (including four applications arising out of the public sector dispute which occurred in early November) by restricting the scope of the picketing in 10 cases and refusing to exercise its discretion in the other two cases.

In addition to the above cases, the Board dealt with two cases where the unions requested declaratory opinions that certain locations were places of business of struck employers and thus could be legally picketed. The Board granted one request and denied the other.

Five cases dealt with by the Board asked for relief from picketing by employees of the complainants, which took place during the public sector dispute in November of 1983. The Board granted the relief requested in all five cases.

In one case, a struck employer asked for relief from picketing during a legal strike. This request was denied by the Board.

VIII. STATISTICAL APPENDIX

A. Introduction

The following tables provide an analysis of the applications filed with and disposed of by the Labour Relations Board in 1982 and 1983.

In a few cases, multiple decisions resulted from one application. These were usually counted as single decisions. However, for two types of applications, where the volume of multiple decisions was higher, different methods were used. Board rulings regarding the status of employees under Section 34 were counted individually -- that is, one application requesting ten rulings was counted as ten decisions, while a withdrawal of such an application was counted as one. Applications to vary accreditations requested varying numbers and types of decisions. Each application was counted as one decision but a footnote indicates the number of employers who were affected by these applications.

An application involving a dispute is classified as withdrawn if the request for withdrawal comes prior to the involvement of an Officer or a Board panel. An application withdrawn following such involvement is classified as settled.

It is important to note when using these figures as a guide that the work content of individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can vary widely as well, from category to category and from application to application.

B. 1982-83 Comparisons

Applications Filed

In 1983, 4985 applications were filed with the B.C. Labour Relations Board, an increase of less than 1% from applications filed in 1982.

In 1983, the Board experienced an increase from 1982 in nine of the 19 categories shown in Table 1; applications for a successor status declaration (62%), for the appointment of a strike or lockout vote observer (61%), for decertification (39%), for reconsideration of a Board decision (18%), to vary a certification (14%), for a common employer declaration (14%), to vary an accreditation (9%), to cancel an accreditation (from 0 to 1), as well as the miscellaneous category (3%).

Applications filed decreased from 1982 in seven categories; applications for certification (43%), for an interpretation of the Labour Code as it applies to the collective bargaining relationship (29%), for the appointment of an officer to settle a grievance (12%), regarding alleged illegal strikes, lockouts and picketing (8%), alleging unfair labour practices (7%), for the appointment of an arbitrator (7%) (included in the miscellaneous category in previous reports), and to review an arbitration award (3%).

Three categories remained unchanged; applications for accreditation, for first contract arbitration and to alter the terms and/or conditions of employment.

Applications Disposed of

In 1983, 4995 applications were disposed of by the B.C. Labour Relations Board, a decrease of 4% from 1982.

In 1983, the Board experienced an increase from 1982 in eight of the 19 categories shown in Table 2; applications for the appointment of a strike or lockout observer (61%), to review an arbitration award (47%), for decertification (44%), for reconsideration of a Board decision (17%), alleging unfair labour practices (8%), to vary an accreditation (2%), for accreditation (from 0 to 1) as well as the miscellaneous category (16%).

Applications disposed of decreased from 1982 in nine categories; applications for first contract arbitration (100%), to vary a certification (39%), for certification (26%), for an interpretation of the Labour Code as it applies to the collective bargaining relationship (24%), regarding alleged illegal strikes, lockouts and picketing (15%), for a successor status declaration (12%), for the appointment of an arbitrator (7%) (included in the miscellaneous category in previous reports), for the appointment of an officer to settle a grievance (4%) and to alter the terms and/or conditions of employment (4%).

Two categories remained unchanged; applications to cancel an accreditation and for a common employer declaration.

C. General Information

In addition to the figures shown in the following tables, in 1983, the Board, of its own motion, made 289 decisions. Most of these were administrative and no employees were

deprived of bargaining rights as a result of these decisions. Breaking down the 289 decisions, 175 were to vary certifications, 74 were to cancel or override certifications, 29 were to vary accreditations, and the remaining 11 were decisions made under various other Sections of the Code.

Votes

For applications disposed of in 1983, 179 votes were conducted.

One hundred and eighteen of the votes involved applications for certification, 105 of these involved only one application for certification, and 13 involved two applications.

The 118 votes involved 131 certification applications. Twenty-three of these applications, involving 1118 eligible voters, were filed under Section 39(1) or under 39(2) where the application was unopposed or was an attempt to fragment an existing unit. Of these, 9 (or 39%) produced a certification. Of the 111 contested applications under Section 39(2), the Board ordered votes for 108 applications, involving 3166 eligible voters, and the applicant won 34 (or 31%) of them. (See Table 9.)

Four votes involved variance of certification applications. Two of these sought to delete a portion of the presently certified bargining unit and the other two to expand the unit, one of these involving dependent contractors.

Forty-six votes (ordered under Section 52) involved decertifications, 40 of these for cases where the application was opposed.

Two votes involved successorship applications.

Four votes involved appeals of decertification decisions and two votes, appeals of decisions regarding the variance of a certification, one of these involving dependent contractors.

Two votes were ordered in connection with alleged unfair labour practices and one, as a result of a Section 34 application.

Hearings

Records indicate there were 319 formal hearings held in 1983. These hearings dealt with a varying number and type of application and were conducted over a varying number of days.

Numerous informal meetings between the parties to a dispute and various employees of the Board were held during the year. In the majority of cases, it was not necessary for the Board to proceed with a formal hearing following those meetings.

Certifications

Tables 7, 8 and 9 outline the results of the certification applications which were disposed of by the Board in 1983. Applying the criteria outlined in Table 8, in 1983 the percentage of successful applications to certify unorganized employees was 96.5%.

In 1983, no certifications were granted under Section 8(4)(e) or under Section 43(3).

There were 47 applications in 1983 to vary certifications so as to expand the bargaining unit; 34 of these were granted adding 323 employees and 47 dependent contractors to existing certifications. There were two votes held to decide these applications.

Three of the 47 applications were expansions to include dependent contractors. Two of these applications were granted and one was rejected.

There were 101 applications to cancel certifications dealt with by the Board. Of the 63 cancellations granted, 40 were opposed by the certified unions and/or by some employees in the bargaining unit. For 33 of these applications, the employees voted to cancel the certification. The Board rejected 27 of the applications (in seven of these cases, the employees voted in favour of the union), and 11 were withdrawn. The Board of its own motion cancelled or overrode 74 certifications for administrative reasons. None of these resulted in a loss of bargaining rights for the employees involved.

In addition to the above, three certifications were cancelled following appeals.

There were 240 applications regarding successor status. While the vast majority of these asked for a declaration of successor rights a few dealt with such other issues as seniority rights or collective agreement status. For 19 of the 240 applications, one union would be succeeding another; 15 of these were granted and four were withdrawn. For the remaining 221, one employer would be succeeding another; 156 of these were granted, 32 were rejected and 33 were withdrawn.

D. Miscellaneous

Table 2 indicates 199 miscellaneous decisions disposed of by the Board in 1983. These include the following.

There were 113 applications under Section 28 (excluding applications pertaining to Part 5 of the Code). These included 50 applications alleging that the terms and conditions of employment had been altered in violation of the Code, 46 applications alleging failure to execute or comply with a collective agreement and six alleging improper conduct in the negotiation of a collective agreement under Section 63 of the Code. The balance alleged violations of various other Sections of the Code.

Six applications for religious exemption were disposed of. Four of these were granted by the Board and two were dismissed.

The Board disposed of 30 applications where one of the parties felt there had been an undue delay in negotiating a disputed issue. Twenty-seven of these were settled without a Board decision. In one case, the parties were ordered to take the dispute to arbitration. In the other two cases, the Board dismissed the applications.

Twenty-six applications for a declaratory opinion (excluding applications pertaining to Part 5 of the Code) were disposed of by the Board. In seven of these cases, an opinion was issued.

The remaining 24 applications referred to a variety of Sections of the legislation administered by the Board.

ACHIEVEMENT OF A FIRST CONTRACT FOLLOWING CERTIFICATION

In the past eight Annual Reports, data regarding the degree of success in achieving a first contract was outlined for certifications granted in the period January 1, 1974, to June 30, 1981.

This study has been continued for two more six-month periods -- July 1, 1981, to December 31, 1981, and January 1, 1982, to June 30, 1982.

As stated in the 1982 Report, data was again retrieved from three sources -- the collective agreement records of the Labour Relations Board and of the Ministry of Labour in Victoria, and a questionnaire sent to trade unions regarding the status of bargaining.

The criteria for measuring the time elapsing remain the same. To compute the time required to achieve a contract, the time from the date of certification to the date of the signing of the collective agreement was calculated. Where the signing date was not available, the date the agreement was received by the Labour Relations Board was used. In the few instances where neither date was available, it was assumed the contract was signed within seven to twelve months following certification.

Again, the results must be qualified by the fact that 11% of the certifications (12% in the 1982 Annual Report) and 10% of the employees (5% in the 1982 Annual Report) were omitted from the study because contract data was not available.

The following is a summary of the results of this study since it began January 1, 1974. It should be noted that a

large proportion (78% in the periods studied for this Report) of the units which obtain a contract prior to certification are small construction industry units.

Certifications Granted to Unorganized Employees in	Percentage Achieving a Contract Prior to Certification		Percentage Without a Contract 18 Months after Certification	
	Units	Employees	Units	Employees
the 1st half of 1974	51.5%	52.0%	9.0%	4.5%
the 2nd half of 1974	35.4%	10.1%	10.6%	6.5%
the 1st half of 1975	40.6%	36.0%	13.0%	10.6%
the 2nd half of 1975	57.9%	48.6%	11.2%	11.0%
the 1st half of 1976	54.1%	51.9%	10.1%	4.0%
the 2nd half of 1976	45.5%	29.7%	15.3%	11.5%
the 1st half of 1977	49.1%	29.4%	12.3%	19.9%
the 2nd half of 1977	49.2%	26.7%	19.5%	32.5%
the 1st half of 1978	43.1%	27.6%	10.6%	18.3%
the 2nd half of 1978	41.2%	17.5%	17.5%	33.6%*
the 1st half of 1979	43.8%	24.1%	14.8%	16.3%
the 2nd half of 1979	38.0%	17.4%	15.5%	25.3%
the 1st half of 1980	42.7%	18.8%	11.8%	6.4%
the 2nd half of 1980	42.8%	30.2%	10.0%	8.8%
the 1st half of 1981	45.3%	27.7%	12.8%	11.2%
the 2nd half of 1981	54.2%	38.7%	12.8%	11.3%
the 1st half of 1982	57.2%	37.1%	13.8%	17.5%

* Another 22.1% of these employees had achieved a contract more than 18 months after certification but before the date of this report (as had a certain, but much smaller percentage, in the other time periods).

FIRST CONTRACT ANALYSIS

CERTIFICATIONS GRANTED TO UNORGANIZED EMPLOYEES

	2ND HALF 1981	1ST HALF 1982
Number of Certifications Granted:	330	382
Less Certifications Where No Contract Information Was Available:	42	34
Number of Certifications in Study:	288	348
Number of Employees Covered by Above Certifications:	3564	3751
Less Employees for Whom No Contract Information Was Available:	402	313
Number of Employees Studied:	3162	3438

PERIOD OF TIME TO ACHIEVE A FIRST CONTRACT

	2ND HALF 1981	1ST HALF 1982	2ND HALF 1981	1ST HALF 1982
Achieving a Contract	Number of Bargaining Units		Percentage of Bargaining Units	
Prior to Certification	156	199	54.2%	57.2%
Within 6 Months of Certification	209	232	72.6%	66.7%
Within 12 Months of Certification	241	290	83.7%	83.3%
Within 18 Months of Certification	251	300	87.2%	86.2%
Balance Remaining Without a First Contract, 18 Months after Certification	37	48	12.8%	13.8%

Achieving a Contract	Number of Employees		Percentage of Employees	
Prior to Certification	1224	1275	38.7%	37.1%
Within 6 Months of Certification	2066	1893	65.3%	55.1%
Within 12 Months of Certification	2613	2608	82.6%	75.9%
Within 18 Months of Certification	2805	2837	88.7%	82.5%
Balance Remaining Without a First Contract, 18 Months after Certification	357	601	11.3%	17.5%

FIRST CONTRACT ANALYSIS (cont.)

DATA REGARDING THE STATUS OF NEGOTIATIONS, 18 MONTHS FOLLOWING CERTIFICATION, OF THE REMAINING BARGAINING UNITS AND EMPLOYEES, INDICATES THE FOLLOWING:

	Number of Bargaining Units		Number of Employees	
	2ND HALF 1981	1ST HALF 1982	2ND HALF 1981	1ST HALF 1982
Certification was cancelled	7	13	52	267
Contract was achieved after 18 months elapsed	9	2	107	21
Negotiations proceeding	1	3	16	62
Negotiations stalled	4	6	28	74
There are presently no employees in the bargaining unit	5	9	41	71
Employer temporarily closed down	0	1	0	4
Employer has gone out of business	5	9	33	46
Rejection of strike by vote	1	0	31	0
Employer hired non-union replacements	2	1	37	5
Employer in receivership	0	1	0	22
Employees would not ratify collective agreement	0	1	0	15
Contract not yet achieved, no reason given	3	2	12	14

PREFACE TO TABLES

A. Under Section 40 of the Labour Code, a union can apply to the Board to consolidate a number of units into one multi-employer certification. Statistically, such applications had been included under variances of certifications. However, two applications, one received in 1981, involving 370 employees, and one received in 1982, involving 1,700 employees, were incorrectly included in Tables 1 and 5 as applications for certifications. Thus, Table 1 for 1982 has been revised by moving one application from applications for certifications to applications for variances of certifications, and Table 5 has been revised by deleting the application and the 1,700 employees from the 1982 figures. A similar revision involving one application and 370 employees should be made to Tables 1 and 5 for 1981. Both applications have been correctly included in Table 2 as variances of certifications disposed of in 1983.

The Board apologizes for any misunderstanding this may have caused.

B. In this report, we have made some minor changes to the Tables, such as deleting the Roman numerals and code numbers which really had little significance.

However, the "Miscellaneous" category has been altered by deleting from it, requests for the appointment of an arbitrator and creating a separate category for these requests. This was done because these requests have formed a substantial proportion of the total number of applications dealt with by the Board since the dissolution of the Public Service Adjudication Board.

TABLE 1

APPLICATIONS AND COMPLAINTS FILED 1982-1983

TYPE OF APPLICATION	1982	1983
Certification		
Applications	*940	540
Variances	*355	404
Cancellations	77	107
Accreditation		
Applications	1	1
Variances	**57	***62
Cancellations	0	1
Declaration of Successor Status	269	435
Appointment of an Officer to resolve a dispute where a collective agreement is in effect	713	628
Complaints of unfair labour practices	342	319
To alter conditions of employment	24	24
For an interpretation of the Labour Code as it applies to the collective bargaining relationship	190	134
For a Board enquiry to settle the terms and conditions of a first collective agreement	0	0
For a Board order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	256	236

cont.

TABLE 1 (cont.)

APPLICATIONS AND COMPLAINTS FILED 1982-1983

TYPE OF APPLICATION	1982	1983
To treat several entities as one employer	63	72
For a review of an arbitration award	66	64
For the appointment of an observer of a strike or lockout poll	566	909
For the appointment of an arbitrator	698	647
Miscellaneous	192	198
For reconsideration of a decision	173	204
TOTAL	4982	4985

* See "Preface to Tables" for explanation of revision.

** To add 94 employers, to delete 12 employers and to vary the names and/or addresses of 18 employers and the address of 1 association.

*** To add 77 employers, to delete 42 employers, and to vary the names and/or addresses of 31 employers and 2 associations.

Note: For further elaboration of the figures in Table 1, refer to the Statistical Appendix.

TABLE 2

APPLICATIONS AND COMPLAINTS DISPOSED OF 1982-1983

TYPE OF APPLICATION	1982	1983
Certification		
Applications	916	678
Variances	679	416
Cancellations	70	101
Accreditation		
Applications	0	1
Variances	*56	**57
Cancellations	0	0
Declaration of Successor Status	273	240
Appointment of an Officer to resolve a dispute where a collective agreement is in effect	720	694
Complaints of unfair labour practices	307	333
To alter conditions of employment	24	23
For an interpretation of the Labour Code as it applies to the collective bargaining relationship	209	159
For a Board enquiry to settle the terms and conditions of a first collective agreement	2	0
For a Board order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	261	223

cont.

TABLE 2 (cont.)

APPLICATIONS AND COMPLAINTS DISPOSED OF 1982-1983

TYPE OF APPLICATION	1982	1983
To treat several entities as one employer	60	60
For a review of an arbitration award	45	66
For the appointment of an observer of a strike or lockout poll	566	909
For the appointment of an arbitrator	698	647
Miscellaneous	172	199
For reconsideration of a decision	161	189
TOTAL	5219	4995

* 102 employers were added to accreditations, 6 were deleted and the names and/or addresses of 13 employers were varied. Requests to add 1 employer, to vary the names and/or addresses of 4 employers and to delete 1 employer were withdrawn.

** 80 employers were added to accreditations, 21 were deleted (20 deletions were uncontested), and the names and/or addresses of 30 employers and 2 associations were varied. Requests to delete 7 employers were denied. Requests to add 1 employer and to delete 6 employers were withdrawn.

Note: For further elaboration of the figures in Table 2, refer to the Statistical Appendix.

TABLE 3

APPLICATIONS AND COMPLAINTS DISPOSED OF THAT WERE DEALT WITH AT A FORMAL HEARING AND/OR WERE DEALT WITH IN A FORMAL BOARD DECISION 1982-1983

TYPE OF APPLICATION	NO./APPLICATIONS AT FORMAL HEARINGS		NO./APPLICATIONS IN FORMAL DECISIONS*	
	1982	1983	1982	1983
Certification				
Applications	28	25		78
Variances	3	17		34
Cancellations	5	13		39
Accreditation				
Applications	0	1		1
Variances	0	2		6
Cancellations	0	0		0
Declaration of Successor Status	26	26		41
Appointment of an Officer to resolve a dispute where a collective agreement is in effect	29	17		29
Complaints of unfair labour practices	88	102		100
To alter conditions of employment	0	1		3
For an interpretation of the Labour Code as it applies to the collective bargaining relationship	32	47		85
For a Board enquiry to settle the terms and conditions of a first collective agreement	1	0		0

cont.

TABLE 3 (cont.)

APPLICATIONS AND COMPLAINTS DISPOSED OF THAT WERE DEALT WITH AT A FORMAL HEARING AND/OR WERE DEALT WITH IN A FORMAL BOARD DECISION 1982-1983

TYPE OF APPLICATION	NO./APPLICATIONS AT FORMAL HEARINGS		NO./APPLICATIONS IN FORMAL DECISIONS*	
	1982	1983	1982	1983
For a Board order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing	59	96		58
To treat several entities as one employer	27	32		29
For a review of an arbitration award	8	12		52
Miscellaneous	49	52		48
For reconsideration of a decision	29	56		149
TOTAL	384	499		*752

* In 1983, the Board changed its procedures regarding published decisions. Letter decisions and formal decisions were consolidated into one series. Statistics for 1983 reflect this consolidated series and cannot be compared with previous years where only formal decisions were considered.

Note: The Board may deal with more than one application and/or complaint at one formal hearing. In 1983, the Board held 319 formal hearings.

TABLE 4

APPLICATIONS AND COMPLAINTS DISPOSED OF BY TYPE AND DISPOSITION 1982-1983

TYPE OF APPLICATION		1982	1983
Certification			
Applications:	Granted	706	441
	Rejected	60	122
	Withdrawn	150	115
Variances:	Granted	626	356
	Rejected	21	28
	Withdrawn	32	32
Cancellations:	Granted	40	63
	Rejected	19	27
	Withdrawn	11	11
Accreditation			
Applications:	Granted	0	1
	Rejected	0	0
	Withdrawn	0	0
Variances:	Granted	55	45
	Rejected	0	7
	Withdrawn	1	5
Cancellations:	Granted	0	0
	Rejected	0	0
	Withdrawn	0	0
Declaration of Successor Status			
	Granted	222	171
	Rejected	18	32
	Withdrawn	33	37

cont.

TABLE 4 (cont.)

APPLICATIONS AND COMPLAINTS DISPOSED OF BY TYPE AND DISPOSITION 1982-1983

TYPE OF APPLICATION	1982	1983
Appointment of an Officer to resolve a dispute where a collective agreement is in effect		
Settled	508	461
Board Arbitration	44	44
Referred Back to Parties	162	178
Not Arbitrable	2	5
Withdrawn	4	6
Complaints of Unfair Labour Practices		
Settled	219	211
Order Issued	9	26
Rejected	75	94
Withdrawn	4	2
To alter conditions of employment		
Granted	9	15
Rejected	5	3
Withdrawn	10	5
For an interpretation of the Labour Code as it applies to the collective bargaining relationship		
Ruling Made	164	123
Withdrawn	45	36

cont.

TABLE 4 (cont.)

APPLICATIONS AND COMPLAINTS DISPOSED OF BY TYPE AND DISPOSITION 1982-1983

TYPE OF APPLICATION	1982	1983
For a Board enquiry to settle the terms and conditions of a first collective agreement		
Settled	2	0
Contract Imposed	0	0
Rejected	0	0
Withdrawn	0	0
For a Board order or opinion pertaining to alleged illegal strikes, lockouts and/or picketing		
Settled	210	153
Order or Opinion issued	30	50
Rejected	21	20
To treat several entities as one employer		
Granted	16	11
Rejected	15	28
Withdrawn	29	21
For review of an arbitration award		
Granted	10	7
Rejected	29	49
Withdrawn	6	10
For the appointment of an observer of a strike or lockout poll		
Appointment Made	566	909

cont.

TABLE 4 (cont.)

APPLICATIONS AND COMPLAINTS DISPOSED
OF BY TYPE AND DISPOSITION 1982-1983

TYPE OF APPLICATION		1982	1983
For the appointment of an arbitrator			
	Request Acknowledged	698	647
Miscellaneous			
	Settled	94	120
	Granted	10	9
	Order or Opinion Issued	22	18
	Rejected	30	37
	Withdrawn	16	15
For reconsideration of a decision			
	Dismissed	125	129
	Varied	14	25
	Reversed	4	13
	Withdrawn	18	22
	TOTAL	5219	4995

Note: The category "Order or Opinion Issued" includes all Board rulings that a violation occurred or that a specific activity should be restricted. Formal orders were not necessarily issued.

The category "Rejected" includes decisions where the Board deems no violation of the Labour Code has occurred as well as decisions where the Board determines no further action is warranted.

TABLE 5

APPLICATIONS FOR CERTIFICATION FILED 1982-1983

INDUSTRY	NUMBER OF APPLICATIONS 1982	1983	NUMBER OF EMPLOYEES* 1982	1983
Manufacturing				
Food & Beverage	**11	5	**188	109
Wood Products	15	11	865	372
Metals (Refining & Fabrication)	23	16	413	70
Machinery, Transportation Equipment, Electrical Products	6	8	146	408
Miscellaneous	51	42	707	986
SUB-TOTAL	106	82	2319	1945
Construction	422	263	2334	1371
Trade and Service				
Trade	61	45	613	939
Education & Health	26	18	1023	899
Municipal	5	2	548	7
Miscellaneous	***287	100	***6139	2602
SUB-TOTAL	379	165	8323	4447
Other Industries				
Mining	6	7	546	1018
Transportation	27	21	246	235
Communications & Other Utilities	0	2	0	6
SUB-TOTAL	33	30	792	1259
TOTAL****	940	540	13768	9022

* The estimate of employees per application is derived from the estimate on the union application. Variances do occur between the time of application and the time of disposal of the application.

** See "Preface to Tables" for explanation of revision.

*** Includes 133 applications, involving 3,859 employees, which were raids on bargaining units in the hospitality industry.

**** Includes some multiple counting where more than one union applied to cover the same group of employees.

APPENDIX TO TABLE 5

NUMBER OF EMPLOYEES IN BARGAINING UNIT 1982-1983

Number of Employees Per Bargaining Unit Applied For	Number of Applications Filed 1982	1983
0 - 10	663	393
11 - 20	127	55
21 - 30	47	34
31 - 40	24	16
41 - 50	28	10
51 - 60	6	5
61 - 70	4	2
71 - 80	12	4
81 - 90	3	5
91 - 100	5	1
101 - 200	18	8
201 - 300	1	5
Over 300	2	2
Median Class of Employees Per Bargaining Unit Applied For:	0 - 10	0 - 10
Average Number of Employees Per Bargaining Unit Applied For:	15	17

TABLE 6

APPLICATIONS FOR CERTIFICATION GRANTED 1982-1983

INDUSTRY	NUMBER OF APPLICATIONS 1982	1983	NUMBER OF EMPLOYEES* 1982	1983
Manufacturing				
Food & Beverage	9	4	233	68
Wood Products	9	4	119	91
Metals (Refining & Fabrication)	19	12	410	54
Machinery, Transportation Equipment, Electrical Products	4	7	28	338
Miscellaneous	43	28	616	374
SUB-TOTAL	84	55	1406	925
Construction	373	210	2109	1027
Trade and Service				
Trade	48	39	455	874
Education & Health	31	16	1477	632
Municipal	6	0	81	0
Miscellaneous	136	97	1997	2173
SUB-TOTAL	221	152	4010	3679
Other Industries				
Mining	5	4	212	328
Transportation	23	18	2903	134
Communications & Other Utilities	0	2	0	6
SUB-TOTAL	28	24	3115	468
TOTAL	706	441	10640	6099

* The estimate of employees per application is derived from the estimate on the union application. Variances do occur between the time of application and the time of disposal of the application.

TABLE 7

CERTIFICATIONS REJECTED IN 1983

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	NUMBER OF EMPLOYEES
A. Organized Employees		
1. Employees to be included in a larger unit already represented	3	97
2. Less than a majority were union members at the date of application	0	0
3. Applicant union rejected by employee vote	74	2275
4. Application untimely	1	3
5. Bargaining unit inappropriate	5	106
6. Applicant does not meet the definition of a trade union	1	2
SUB-TOTAL	84	2483
B. Unorganized Employees		
1. Bargaining unit not under the jurisdiction of the Board	0	0
2. Less than 2 employees in the bargaining unit	3	N/A
3. Employees to be included in a larger unit already represented	4	61
4. Employees to be included in a larger unit not yet (but subsequently) represented	0	0
5. Less than the legal membership requirement signed up by the union at the date of application	4	19

cont.

TABLE 7 (cont.)

CERTIFICATIONS REJECTED IN 1983

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	NUMBER OF EMPLOYEES
6. Employees voted for no union	11	344
7. Employees voted for certification of another union	3	316
8. Bargaining unit inappropriate	12	393
9. Applicant does not meet the definition of a trade union	1	200
SUB-TOTAL	38	1333
TOTAL	122	3816

C. Number of Certification Applications Disposed of: 678

Less: Applications Withdrawn

Applications to cover presently organized employees

Applications not under the jurisdiction of the Board

Applications for an inappropriate Bargaining unit

Applications where employees are or will be represented through another certification

NET 422

D. Certification Applications for Unorganized Employees Rejected Because of:

Failure to meet membership requirements, or

An employee vote against the union 15

D as a percentage of C: 3.5%

TABLE 8

CERTIFICATION APPLICATIONS DECIDED BY THE BOARD IN 1983

APPLICATIONS	GRANTED	REJECTED	TOTAL
Unorganized Employees	407	38	*445
Organized Employees	34	84	118
TOTAL	441	122	563

* Deleting the 23 applications for unorganized employees which were rejected because they did not come under the jurisdiction of the Board, because the employees involved were represented through another certification, because the bargaining unit was inappropriate or because the applicant did not meet the definition of a trade union, the percentage of successful applications to certify unorganized employees can be expressed as 407 out of 422 or 96.5%.

NUMBER OF EMPLOYEES	GRANTED	REJECTED	TOTAL
Unorganized Employees	4951	1333	6284
Organized Employees	1148	2483	3631
TOTAL	6099	3816	9915

cont.

TABLE 8 (cont.)

CERTIFICATION APPLICATIONS DECIDED BY THE BOARD IN 1983

ATTEMPTS BY ANOTHER UNION TO REPLACE AN INCUMBENT UNION	SUCCESSFUL	UNSUCCESSFUL	TOTAL
Number of attempts			
(a) Hospitality Industry*	28	**69	97
(b) Other	***6	8	14
Number of Employees Involved****			
(a) Hospitality Industry	732	1727	2459
(b) Other	402	633	1035

* 34 of the 133 applications filed in 1982, involving 1324 employees were withdrawn by the applicant unions.

** Includes some multiple counting where 2 unions applied for the same unit. In 7 of the unsuccessful applications, involving 178 employees, the incumbent was also unsuccessful. Another 4 of the unsuccessful applications, involving 80 employees, concerned 2 units where the incumbent retained the certification.

*** For 1 of the successful attempts, involving 4 employees, an existing certification with the successful union was varied to include these employees.

**** The balance of the organized employees were involved in unopposed representation changes or attempts to enlarge or fragment existing bargaining units.

TABLE 9

CERTIFICATION APPLICATIONS RESULTING IN A VOTE IN 1983

A.	Number of applications pertaining to unorganized employees or to organized employees where the representation change was unopposed or was an attempt to fragment or enlarge a unit, which resulted in a vote	23 out of 452* or 5%
	Number of successful applications	9
	Number of unsuccessful applications	14
	Percentage of successful applications	39%
	Total number of eligible voters involved in the 23 applications**	1118
B.	Number of applications involving attempts by another union to replace an incumbent union, which resulted in a vote	108 out of 111 or 97%
	Number of successful applications	34
	Number of unsuccessful applications	74
	Percentage of successful applications	31%
	Total number of eligible voters involved in the 108 applications**	3166

* A total of 563 new certification applications were decided upon by the Board in the report year 1983. Of these, 111 applications involved attempts by a union to win the right to represent an entire bargaining unit already actively represented by another union.

** This figure can vary from the number of employees originally applied for. In some cases, two or more applications were received resulting in one vote and thus one group of eligible voters.

TABLE 10

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF 1982-1983

NATURE OF THE DISPOSITION	NUMBER OF APPLICATIONS 1982	1983
Settled		
1. Issue Disputed		
a) Advantage to Union	270	270
b) Advantage to Employer	125	79
c) Advantage Not Decisive	66	45
d) Advantage Unknown	32	38
2. Issue Not Disputed	15	29
SUB-TOTAL	508	461
Board Arbitration		
1. Issue Disputed		
a) Advantage to Union	16	14
b) Advantage to Employer	16	12
2. Issue Not Disputed	12	18
SUB-TOTAL	44	44
Referred Back		
(All Issues Disputed; Advantage Unknown)	162	178
Not Arbitrable (all issues disputed)		
a) Advantage to Union	0	1
b) Advantage to Employer	2	4
SUB-TOTAL	2	5
Withdrawn	4	6
TOTAL	720	694

cont.

TABLE 10 (cont.)

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF 1982-1983

NATURE OF THE DISPOSITION	NUMBER OF APPLICATIONS 1982	1983
Summary		
1. Issue Disputed		
a) Advantage to Union	286	285
b) Advantage to Employer	143	95
c) Advantage Not Decisive	66	45
d) Advantage Unknown	194	216
SUB-TOTAL	689	641
2. Issue Not Disputed	27	47
3. Withdrawn	4	6
TOTAL	720	694

Note: "Board Arbitration" includes all decisions by the Board finalizing a grievance, even though a formal Order may not have been issued.

The advantage goes to the trade union if they gain anything at all from filing the application.

"Not Decisive" includes those withdrawn because it was decided to process the grievance through other means.

"Not Disputed" covers those situations where the employer acknowledges the legitimacy of the grievance but is unable to settle because of financial difficulties.

TABLE 11

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF IN 1983

GRIEVANCE PERTAINED PRINCIPALLY TO*		NUMBER OF APPLICATIONS
1.	Wages	121
2.	Dismissal or suspension	117
3.	Layoff	100
4.	Use of non-union personnel (including subcontractors)	78
5.	Contributions for fringe benefits	52
6.	Allocation of work	26
7.	Grievance procedure	24
8.	Reprimand	22
9.	Hours of work (including vacations, leaves of absence)	20
10.	Promotion	18
11.	Jurisdiction	12
12.	Sickness and accident benefit	11
13.	Seniority	11
14.	Demotion	10
15.	Union dues	10
16.	Work expenses	9
17.	Job Classification	6
18.	Inclusion of a position in the bargaining unit	6
19.	Union membership	5
20.	Job posting	5

cont.

TABLE 11 (cont.)

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF IN 1983

GRIEVANCE PERTAINED PRINCIPALLY TO*	NUMBER OF APPLICATIONS
21. General collective agreement compliance	4
22. Transfer	4
23. Training	4
24. Job description	3
25. "Manning" clause	3
26. Job action	2
27. Job evaluation	2
28. Work environment	1
29. Temporary assignment of duties outside grievor's classification	1
30. Union business	1
31. Technological change	1
32. Temporary employees	1
33. Separation slip	1
34. Safety	1
35. Tuition fees	1
36. Life Insurance benefit	1

* Frequently an application indicated more than one type of grievance involved. However, for the above analysis, the apparent major cause of the dispute was chosen to characterize the application.

TABLE 12

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER TO SETTLE A GRIEVANCE UNDER AN EXISTING COLLECTIVE AGREEMENT DISPOSED OF IN 1983

INDUSTRY	FILED BY UNION	FILED BY EMPLOYER	TOTAL
Manufacturing			
Food & Beverage	12	0	12
Wood Products	37	1	38
Metals (Refining & Fabrication)	33	0	33
Machinery, Transportation Equipment, Electrical Products	20	2	22
Miscellaneous	44	1	45
SUB-TOTAL	146	4	150
Construction	104	7	111
Trade and Service			
Trade	30	3	33
Education & Health	63	9	73
Municipal	20	6	26
Miscellaneous	211	4	*216
SUB-TOTAL	324	22	348
Other Industries			
Mining	45	0	45
Transportation	37	1	38
Communications & Other Utilities	2	0	2
SUB-TOTAL	84	1	85
TOTAL	658	34	**694

* 138 of these originated in the hotel, restaurant and beverage dispensing industry.

** Two applications were filed jointly by an employer and a union.

cont.

TABLE 12 (cont.)

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER
TO SETTLE A GRIEVANCE UNDER AN EXISTING
COLLECTIVE AGREEMENT DISPOSED OF IN 1983

ANALYSIS OF APPLICATIONS FILED BY AN EMPLOYER

EMPLOYER NAME	NUMBER OF APPLICATIONS
School District No. 36 (Surrey)	2
School District No. 57 (Prince George)	2
Alberni District Credit Union	1
Barber-Ellis of Canada, Limited	1
Brentwood Dodge Ltd.	1
British Columbia Jockey Club	1
Foundation Company of Canada	1
Inland Kenworth Sales Limited	1
District of Kitimat	1
Koplin Enterprises Ltd.	1
Kwantlen College	1
L.A. Acoustic Applicators Ltd.	1
Tom Lane Construction Mngnt. Ltd.	1
H.Y. Louie Company Limited	1
City of North Vancouver	1
Northern Construction Company	1
Pacific Truck and Trailer Ltd.	1
Pedersen & MacTaggart Ltd.	1
City of Port Moody	1
City of Prince George	1
City of Prince Rupert	1
Quest Distributors Ltd.	1
Royal Canadian Legion (Pacific No. 242)	1

cont.

TABLE 12 (cont.)

APPLICATIONS FOR THE APPOINTMENT OF AN OFFICER
TO SETTLE A GRIEVANCE UNDER AN EXISTING
COLLECTIVE AGREEMENT DISPOSED OF IN 1983

ANALYSIS OF APPLICATIONS FILED BY AN EMPLOYER

EMPLOYER NAME	NUMBER OF APPLICATIONS
Scandinavian Building Maintenance Ltd.	1
School District No. 32 (Hope)	1
School District No. 68 (Nanaimo)	1
School District No. 75 (Mission)	1
Standard Aero Limited	1
District of Stewart	1
University of British Columbia	1
Western Carriers Ltd.	1
Westmark Developments Ltd.	1
TOTAL	34

ANALYSIS OF APPLICATIONS FILED BY UNIONS AGAINST EMPLOYERS

Number of employers subject to 1 application	340
2 applications	58
3 applications	18
4 applications	7
5 applications	3
6-10 applications	4
11-15 applications	1
more than 15 applications	3
Total employers	434
Total applications	658

TABLE 13

APPEALS DISPOSED OF IN 1983

TYPE OF DECISION BEING RECONSIDERED	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
Certification	28	1	1	4	34
Appeal of a certification decision	0	1	0	0	1
Vote re: certification	0	1	0	0	1
Appeal of a vote re: certification	1	0	0	0	1
Variance of certification	5	3	0	3	11
Appeal of a variance of certification	1	1	0	0	2
Vote re: variance of certification	2	0	0	0	2
Cancellation of a certification	3	6	0	1	10
Vote re: cancellation of certification	3	0	0	1	4
Appeal of a vote re: cancellation of certification	1	0	0	0	1
Variance of accreditation	3	0	0	0	3
Declaration of successor status	12	2	1	1	16
Vote re: declaration of successor status	1	0	0	0	1
Appeal of a declaration of successor status	1	0	0	0	1

cont.

TABLE 13 (cont.)

APPEALS DISPOSED OF IN 1983

TYPE OF DECISION BEING RECONSIDERED	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
The disposition of a grievance under an existing collective agreement	4	2	1	1	8
Unfair labour practice adjudication	20	3	2	4	29
Appeal of an unfair labour practice adjudication	1	0	0	0	1
A Board ruling re: an interpretation of the Labour Code as it applies to the collective bargaining relationship	10	1	2	5	18
Appeal of a Board ruling re: an interpretation of the Labour Code as it applies to the collective bargaining relationship	4	0	0	0	4
A Board ruling re: more than one corporate entity being considered as one employer	7	1	2	0	10
Appeal of a Board ruling re: more than one corporate entity being considered as one employer	1	0	0	0	1
A Board ruling pertaining to alleged illegal strikes, lockouts and/or picketing	11	0	3	1	15

cont.

TABLE 13 (cont.)

APPEALS DISPOSED OF IN 1983

TYPE OF DECISION BEING RECONSIDERED	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
A Board review of an arbitration award	4	0	0	0	4
A Board ruling re: the filing of an order in the Supreme Court	1	0	0	0	1
A Board ruling re: religious exemption	0	1	0	0	1
A Board ruling re: technological change	0	1	0	0	1
A Board ruling under the Essential Services Disputes Act	1	0	0	0	1
A Board ruling re: jurisdiction	0	1	0	0	1
A Board ruling re: status of a union	1	0	0	0	1
A Board ruling re: procedure	3	0	1	1	5
TOTAL	129	25	13	22	189

APPELLANT(S)	DISMISSED	VARIED	REVERSED	WITHDRAWN	TOTAL
Employer	53	8	5	13	79
Union	54	10	6	6	76
Employee(s)	19	6	1	3	29
Employer and Union	1	0	0	0	1
Employer and Employee(s)	0	1	1	0	2
Accredited Association	2	0	0	0	2
TOTAL	129	25	13	22	189

TABLE 14

APPLICATIONS FOR A BOARD ORDER OR OPINION PERTAINING TO ALLEGED ILLEGAL STRIKES, LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1983

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION*
A. Dispute settled by an investigating officer or a Panel of the Board			
1. re alleged illegal lockout	13	5	0
2. re alleged illegal strike	31	5	0
3. re alleged illegal strike and picketing	38	14	0
4. re picketing (employer complaint)	48	3	0
5. re picketing (trade union application for a declaratory opinion)	9	1	0
6. re activity affecting business, etc. (S.90)	14	2	0
SUB-TOTAL	153	30	0
B. Dispute disposed of by a Board adjudication that a violation had occurred or would occur or that a specific activity should be restricted			
1. re alleged illegal lockout	1	1	1

cont.

TABLE 14 (cont.)

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1983

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION*
2. re alleged illegal strike			
- work stoppage	13	12	8
- refusal to perform certain duties	5	4	3
3. re alleged illegal strike and picketing			
- work stoppage	14	13	13
4. re picketing (employer complaint)			
- common site	10	10	9
- other	5	5	5
5. re picketing (trade union application for a declaratory opinion)			
- alleged secondary location of a struck employer	1	1	1
6. re activity affecting business, etc. (S.90)	1	1	1
SUB-TOTAL	50	47	41
C. Dispute disposed of:			
(a) by a Board adjudication that no violation had occurred or would occur or that a specific activity should not be restricted, or			
(b) by the Board refusing to rule on the proceedings			
1. re alleged illegal lockout	4	4	3

cont.

TABLE 14 (cont.)

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1983

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION*
2. re alleged illegal strike - work stoppage	7	7	6
3. re alleged illegal strike and picketing - work stoppage	3	2	2
4. re picketing (employer complaint)			
- common site	2	2	2
- other	1	1	1
5. re picketing (trade union application for a declaratory opinion)			
- alleged secondary location of a struck employer	1	1	1
- ally	2	2	2
SUB-TOTAL	20	19	17
TOTAL	223	96	*58

* In 1983, the Board changed its procedures regarding published decisions. Letter decisions and formal decisions were consolidated into one series. Statistics for 1983 reflect this consolidated series and cannot be compared with previous years where only formal decisions were considered.

Note: The applications in Table 14 include those filed to avert threatened strikes, lockouts, and/or picketing (through a declaratory opinion, a jurisdictional decision, etc.) as well as those protesting some form of actual job action.

TABLE 15

APPLICATIONS FOR A BOARD ORDER OR OPINION
PERTAINING TO ALLEGED ILLEGAL STRIKES,
LOCKOUTS, AND/OR PICKETING DISPOSED OF IN 1983

INDUSTRY*	FILED BY EMPLOYER(S)**	FILED BY UNION	TOTAL
Manufacturing			
Food & Beverage	0	0	0
Wood Products	34	3	37
Metals (Refining & Fabrication)	0	4	4
Machinery, Transportation Equipment, Electrical Products	3	2	5
Miscellaneous	10	3	13
SUB-TOTAL	47	12	59
Construction	47	1	48
Trade and Service			
Trade	7	6	13
Education & Health	45	3	48
Municipal	10	0	10
Miscellaneous	13	6	19
SUB-TOTAL	75	15	90
Other Industries			
Mining	3	0	3
Transportation	18	0	18
Communications & Other Utilities	2	3	5
SUB-TOTAL	23	3	26
TOTAL	192	31	223

* Based on applicant's type of business.

** Not necessarily the employer of the respondents.

TABLE 16

APPLICATIONS FILED IN 1983 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly-used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Boilermakers	6	0	0	2
Bricklayers	4	0	0	1
C.L.A.C.	5	0	0	0
Carpenters	92	9	7	62
Cement Workers	0	0	1	1
Electrical Workers	5	2	4	10
Glaziers & Glass Workers	3	4	0	5
Iron Workers	30	0	2	13
Labourers	67	4	7	38
Machinists & Aerospace Workers	9	3	12	5
Operating Engineers	40	3	8	34
Painters	29	1	0	4
Plasterers	3	0	0	4
Plumbers	4	3	0	0
Sheet Metal Workers	39	2	1	6
Tilesetters	0	0	0	7
C.P.U.	0	0	0	1
I.W.A.	11	5	6	8
P.P.W.C.	0	0	1	17

cont.

TABLE 16 (cont.)

APPLICATIONS FILED IN 1983 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly-used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
C.U.T.E.	0	0	0	9
Marine Workers	2	0	0	5
Merchant Service	2	0	0	0
Teamsters	26	11	13	16
Transit Union (ATU)	2	0	0	5
Transit Union (ICTU)	3	0	0	0
Transport & General Workers	9	1	2	8
Western Transportation Union	0	0	0	2
Service Employees	7	5	3	8
Service, Office, Retail Workers	5	1	5	0
Theatrical Stage Employees et al	5	0	1	0
Directors Guild	1	0	0	0
Fire Fighters	0	0	0	2
Police Officers	0	0	0	2
CHAW	7	0	18	0
Hospitality Workers	1	0	4	0
Hotel Employees	13	17	17	135
Restaurant and Related Employees	1	0	0	0

cont.

TABLE 16 (cont.)

APPLICATIONS FILED IN 1983 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly-used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Health Sciences Association	3	0	0	0
Hospital Employees' Union	8	1	9	27
Nurses	0	0	0	4
Garment Workers	0	0	0	2
Marble Polishers	2	0	0	0
Molders	0	0	0	1
Newspaper Guild	0	0	0	1
Graphic Communication	6	3	3	0
Typographical Union	4	1	1	0
CAIMAW	6	0	11	7
CASAW	1	0	0	0
Energy & Chemical Workers	1	0	0	2
Steelworkers	14	3	8	47
Food & Commercial Workers	2	3	2	24
Retail Clerks	20	5	4	14
Retail, Wholesale Employees	0	2	3	1

cont.

TABLE 16 (cont.)

APPLICATIONS FILED IN 1983 ANALYZED BY UNION

UNION NAME (Names have been abbreviated. Where possible, the commonly-used, shortened form appears.)	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Bakery Workers	2	0	0	0
Brewery Workers	0	2	1	0
Can. Farmworkers Union	2	1	3	1
Food & Service Workers	4	0	1	0
General Farm & Allied Workers	1	0	0	0
United Fishermen	0	1	2	0
C.U.P.E.	10	2	6	32
O.T.E.U.	6	2	3	9
Telecommunication Workers	2	0	0	0
Union of Bank Employees	0	0	0	1
B.C.G.E.U.	0	0	3	2
Professional Employees	3	0	1	0
Vancouver Municipal & Regional Employees Union	2	2	3	4
West Coast Race Track Employees Association	0	0	0	1
A.U.C.E.	1	0	0	1

cont.

TABLE 16 (cont.)

APPLICATIONS FILED IN 1983 ANALYZED BY UNION

OTHER	CERTIFICATION APPLICATIONS FILED BY	DECERTIFICATION APPLICATIONS FILED AGAINST	UNFAIR LABOUR PRACTICE COMPLAINTS FILED BY	APPOINTMENT OF AN OFFICER APPLICATIONS FILED BY
Faculty Association	1	0	3	12
Single Employer Independent Union	8	0	0	1
Building Trades Council	0	0	0	1
Employee(s)	0	0	**122	0
Employer(s)	0	0	19	25
TOTAL APPLICATIONS FILED	540	*99	***320	****630

* Eight applications were filed by unions.

** Includes 121 applications filed by employees against their unions.

*** One application was filed jointly by the Carpenters and the Labourers.

**** Two applications were filed jointly, one by an employer and C.U.P.E., and one by an employer and the West Coast Race Track Employees Association.

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